

Richard A. Bauman

THE CRIMEN MAIESTATIS

in the ROMAN REPUBLIC and AUGUSTAN PRINCIPATE

The Crimen Maiestatis in the
Roman Republic and Augustan Principate

The Crimen Maiestatis in the Roman Republic and Augustan Principate

Richard A. Bauman

Witwatersrand University Press
Johannesburg
1967

The present work is a slightly revised version of a thesis approved for the degree of Doctor of Philosophy in the University of the Witwatersrand, Johannesburg, 1963

© Witwatersrand University Press 1967

Set in 11 on 12 point Old Style

Printed by THE NATAL WITNESS (PTY) LTD., Pietermaritzburg

TO SHEILA

Contents

	<i>Page</i>
ACKNOWLEDGEMENTS	iii
EXPLANATORY NOTE	v
INTRODUCTION	vii

PART ONE: MAIESTAS IN THE ROMAN REPUBLIC

Chapter

1	THE ROMAN CONCEPT OF MAIESTAS	1
	A. The Meaning of Maiestas	1
	B. The Maiestas of the Gods	4
	C. Maiestas Populi Romani	6
	D. Derivative Maiestas	12
2	THE ORIGIN OF THE CRIMEN MAIESTATIS	16
	A. Perduellio in the Third and Second Centuries B.C.	16
	B. "Iudicium Maiestatis Apud Populum"	23
3	THE LEX MAIESTATIS: SATURNINUS	34
	A. Introduction	34
	B. "Ex Quo Verbo Tota Illa Causa Pendebat"	38
4	THE LEX MAIESTATIS: VARIUS AND SULLA	59
	A. Lex Varia Maiestatis	59
	B. Lex Cornelia Maiestatis	68
	C. Conspectus of the Crimen Maiestatis in the Republic	87

PART TWO: CAESAR AND THE LEX MAIESTATIS

5	MAIESTAS IN 59 B.C.	93
6	MAIESTAS IN GAUL	105
7	"EGO ET POPULUS ROMANUS"	118
8	CICERO ON CLEMENCY	140
9	CAESAR'S MAIESTAS LEGISLATION	155

*PART THREE: MAIESTAS IN THE AUGUSTAN
PRINCIPATE*

10	A LEX AND SOME CONSPIRACIES	171
	A. Lex Pedia (Maiestatis)	171
	B. Four Augustan Maiestas Trials.. .. .	180
11	"SUA DOMUSQUE SUAE MAIESTAS"	198
	A. The Case of the Emperor's Daughter ..	198
	B. "Gravi Nomine Laesarum Religionum Ac Violatae Maiestatis Appellando"	206
12	"DE FAMOSIS LIBELLIS"	246
13	"AD LEGEM IULIAM MAIESTATIS"	266
CONCLUSION		293
BIBLIOGRAPHY		295
INDEX		311
SOURCE INDEX		323

Acknowledgements

I am grateful to the following for permission to quote extracts from their publications:

The Editor, *Aevum*: H. Drexler, 'Maiestas', in volume 30, 1956.

Basil Blackwell, Publisher: H. Wagenvoort, *Roman dynamism: studies in ancient Roman thought, language and custom*. 1947.

Cambridge University Press: W. E. Heitland, *The Roman Republic*. Volume 3, 1909.

The Clarendon Press, Oxford: F. Schulz, *Principles of Roman Law*. 1936.

The Clarendon Press, Oxford and University of California Press: C. Bailey, *Phases in the religion of ancient Rome*. 1932. (Sather Classical Lectures 10)

George Allen & Unwin Ltd.; S. I. Hayakawa, *Language in thought and action*. 1952.

Jurisprudence Générale Dalloz; P. F. Girard, *Histoire de l'organisation judiciaire des Romains*. 1901.

The Johns Hopkins Press: H. J. Wolff, Review of Schulz 'History of Roman Legal Science' in *American Journal of Philology*, volume 71, 1950.

La Nuova Italia Editrice: M. A. Levi, *Il tempo di Augusto*. 1951. (Storici Antichi e Moderni, n.s.7).

The Secretary, *Revue Internationale des Droits de l'Antiquité*: G. C. Archi, 'Gli studi di diritto penale romano da Ferrini a noi', in volume 3, 1950.

Franz Steiner Verlag: M. Gelzer, *Caesar der Politiker und Staatsmann*. 1960.
H. G. Gundel, 'Der Begriff Maiestas im politischen Denken der römischen Republik' in *Historia*, volume 12, 1963.

University of California Press: L. R. Taylor, *Party politics in the age of Caesar*. 1949. (Sather Classical Lectures 22)

Washington University Press: D. McFayden, 'The rise of the Princeps' jurisdiction within the city of Rome' in *Washington University Studies, Humanistic Series*, volume 10, 1923.

Explanatory Note

THE BIBLIOGRAPHY has been designed as an integral part of the work. It sets out every work which has been consulted, with the exception of certain works which, for particular reasons, are more conveniently listed in footnotes. Furthermore, the bibliography does not list the particular articles in the *Real-Encyclopädie* which have been consulted, except Kübler's article on *maiestas*; nor does it list the articles consulted in the *Cambridge Ancient History*.

It will be observed that in respect of each of the works set out in Section I of the bibliography, which lists the source-material, an abbreviated citation appears in the right-hand column. That work is cited in the text under the abbreviated form. A similar procedure has been followed in the case of modern works, which make up Section II of the bibliography. It will be noticed in Section II, however, that an abbreviated citation does not appear against certain works. The reason is that the works in question, although consulted in the preparation of the study, are not cited in the text.

It will be seen that in Section II of the bibliography, in respect of certain works where the modern authorities concerned have functioned as editors rather than as authors, the names of the modern authorities are given, in parentheses, in the left-hand column, and repeated in the right-hand column. This has been done for ease of reference, in view of the method of citation which has been adopted.

It has been found advisable to restrict footnotes, as far as possible, to additional commentary which does not readily fit into the text, and to give references in the body of the text. Where, however, the quantity of references at a particular point would unduly burden the text, they are given in a footnote.

Translations of a number of the Greek and Latin extracts have been given in the footnotes. These have been included solely for the convenience of readers who are not familiar with the classical languages, and are free renderings with no claim to literary merit.

Introduction

Definitions of treason are seldom precise, but the Romans do not seem to have attained even a moderate degree of precision in the matter, and trials for *maiestas* were decided mainly on political considerations.

(Jolowicz, 327-8)

There is no conception of Roman criminal law whose history it is easier to trace than that of treason.

(Greenidge, *Treason* 240)

The subject of this study is the *crimen maiestatis populi Romani imminutae*, which is also known as *crimen maiestatis imminutae* (*minutae*), *crimen maiestatis*, and simply as *maiestas*. Except where something turns on *crimen* being rendered as 'charge', it will be rendered as 'crime'. The crime will generally be referred to hereinafter as the *crimen maiestatis*, or as *maiestas* (where there is no possibility of confusion with the general concept of *maiestas*, as distinct from the crime). The *crimen maiestatis* will be studied during the period of the Roman Republic and the Augustan Principate. As far as the 'Roman Republic' is concerned the inquiry will, apart from occasional glances at the earlier period, concentrate on the period from the third century B.C. onwards. The reasons for the selection of this starting-point appear in Chapter 2. For reasons which will appear (Chapter 1, and *passim*), it is not proposed to attempt a definition of the *crimen maiestatis*.

It should be emphasized at the outset that to speak of 'treason' or 'high treason' as equivalents of the *crimen maiestatis* is misleading. A representative definition of modern treason is: "High Treason . . . is committed by those who with a hostile

intention disturb, impair or endanger the independence or safety of the State, or attempt or actively prepare to do so.”¹ To a certain extent such a definition serves to indicate some of the features of the *crimen maiestatis*, in so far as certain forms of the crime were directed against the ‘safety of the State’, and in those cases the wrongdoer acted ‘with a hostile intention’. But there were many forms of *maiestas* which did not endanger the safety of the State, and were not committed with hostile intent. A conspiracy against the *res publica* may well have resembled ‘treason’, but the modern law of treason would exclude many of the categories which formed part of the *crimen maiestatis*. It was *maiestas* to conspire against the State, or to collude with the enemy, but it was also *maiestas* to lose a battle; to disregard the auspices; to ill-treat prisoners of war; to leave a province without authority; to use violence against a magistrate; to interrupt a tribune; to lay false claim to Roman citizenship; to visit a brothel in an official capacity; to hold court while intoxicated, or dressed in women’s clothes; to incite civil commotion; to falsify public records; to publish defamatory pamphlets; and to commit adultery with the emperor’s daughter. There was an homogeneous principle running through all these cases (with the probable exception of the last-mentioned), but it was not a principle which can be brought under one category in terms of the modern concept of treason.

The present study approaches the *crimen maiestatis* in two ways. The first approach is basically a direct chronological one, whereby the successive stages in the development of the crime are examined, from its origin up to and including the Principate of Augustus. This approach is concerned with the *crimen maiestatis populi Romaniim minutae*, properly so called. This crime consisted in the performance of various acts which ‘diminished’ *maiestas populi Romani*, that is, the *maiestas* of the Roman People, which means the *maiestas* of the *res publica*, or of the State. *Maiestas populi Romani* was a technical legal concept, which was probably first formulated in the mid-third century B.C., and which expressed the superior position which

¹ C. W. H. Lansdown, W. G. Hoal and A. V. Lansdown, *South African Criminal Law and Procedure*, 6 ed., Johannesburg, Juta 1957, 987.

the Roman State conceived itself as occupying, as against all other peoples. *Maiestas populi Romani* was given technical legal protection against diminution at the hands of other peoples by the conclusion of treaties in a form which bound the other contracting party to 'respect and preserve' the *maiestas* of the Roman People; and it was protected against diminution at the hands of Roman citizens by the *crimen maiestatis*. The fundamental feature of the *crimen maiestatis* is that the only form of *maiestas* with which it was concerned was *maiestas populi Romani*. Although Roman magistrates possessed *maiestas*, they did so only in a derivative sense, as the delegates of the Roman People, and when the protection of the *crimen maiestatis* was extended to them it was quite clear in legal theory that the ultimate *maiestas* which was being protected was *maiestas populi Romani*.

The first approach will be to examine the process whereby the public criminal law of Rome evolved rules for the protection of *maiestas populi Romani*, and to consider the application of these rules to concrete cases. This approach is pursued in the whole of Part One, which covers Chapters 1-4, and in Chapters 5, 6, 8 and 9 of Part Two, and in Chapters 10, 12 and 13 of Part Three.

The subject is introduced, in Chapter 1, by an analysis of the concept of *maiestas* (as distinct from the crime) in certain of its connotations, with particular reference to *maiestas populi Romani*. This chapter is intended to give some indication of how the Romans understood their *maiestas*, for in order to appreciate what they meant when they said that their *maiestas* had been 'diminished', it is necessary to know what their *maiestas* was.

The development of the *crimen maiestatis* divides into two distinct periods, namely the period prior to the first *lex maiestatis*, and the period which began with the first *maiestas* statute. The first of these two periods is discussed in Chapter 2, which analyses the process by which the *crimen maiestatis* was first brought within the ambit of the public criminal law, by way of the fragmentation of a particular segment of the diffuse crime of *perduellio*.

Chapter 3 introduces the second period, namely that of the *maiestas* statutes. This chapter is devoted to the first *lex*

maiestatis, namely the *lex Appuleia maiestatis* of Saturninus. There is a brief review of the legislation which preceded this statute, and some attention is given to certain laws which were carried in the years immediately before the *lex Appuleia*. The chapter then proceeds to consider the crucial problems of the *lex Appuleia*, namely the permanence or otherwise of the *quaestio* which it established, the date of its enactment, and the scope of the crime with which it was concerned. The chapter concludes with a discussion of two fragments which some authorities have identified as containing provisions of the *lex Appuleia*.

Chapter 4 (A) deals with the *maiestas* law of Varius. The problem of its date is briefly discussed, and attention is then given to the content of the law and the circumstances of its enactment. The discussion concludes with the curious question of the execution of Varius under his own law.

Chapter 4 (B) considers the *maiestas* law of Sulla. The content of the law is approached by way of the attempt which was made, at the trial of C. Cornelius, to give the *lex* an extensive interpretation. The reasons for the law's enactment are then examined, and the provisions of the *lex* are analysed. Attention is also given to two special problems connected with the *lex*, namely as to whether it introduced torture in *maiestas* cases, and as to the relationship between the crimes of *maiestas* and extortion.

Chapter 4 (B) also introduces a theory which forms the first of the two propositions which the work attempts to defend. It will be submitted, in Chapter 3, that the *lex Appuleia maiestatis* established a permanent *quaestio maiestatis*, and brought a particular category of wrongful acts under its jurisdiction. It will further be submitted, in Chapter 4 (A), that the *lex Varia maiestatis* brought another category under the same permanent *quaestio*. Chapter 4 (B) argues that the *lex Cornelia maiestatis*, contrary to a fairly widespread belief, was not a 'general' law of *maiestas*, but merely submitted another category to the existing permanent *quaestio*. The proposition which is formulated as a result of this finding, together with the findings in regard to the *maiestas* laws of Caesar and Augustus (which are considered in Chapters 9 and 13 respectively), is described by the author as 'the

theory of the little laws', and may be stated as follows:

It is believed, in opposition to the general view, that the *maiestas* laws of Sulla, Caesar and Augustus conformed to the pattern of the Appuleian and Varian laws, in that each of these laws merely submitted a further category to the jurisdiction of the *quaestio maiestatis*, and that none of these laws was a 'general' law of *maiestas*. It is further postulated, in opposition to the general view, that the legislation of Saturninus, Varius, Sulla, Caesar, and Augustus by no means made up the entire body of *maiestas* statute law. On the contrary, there may have been any number of other 'little laws of *maiestas*', including the *lex Papia*, the *lex Licinia Iunia*, the *lex Hirtia*, and the *lex Pedia*.

Chapter 4 (B) attempts the identification of the first of the other 'little laws of *maiestas*' mentioned in the proposition, namely the *lex Papia*.

Chapter 4 (C) gives a conspectus of the *crimen maiestatis*, as it was developed in the Republic, up to and including the legislation of Sulla. Consideration is given to the view that the *crimen maiestatis* could be committed only by magistrates and senators. This is followed by a characterization of the *crimen maiestatis* as the charge whose sole objective was the protection of *maiestas populi Romani*.

Chapter 5 considers Caesar's contraventions of the *maiestas* law during his first consulship. There is an analysis of the way in which the carrying by Caesar and Vatinius of Caesar's first agrarian law constituted the *crimen maiestatis*. The law which was breached is identified as the *lex Licinia Iunia*, which is the second of the other 'little laws of *maiestas*' mentioned in the proposition. The discussion then turns to the circumstances of the prosecution of Vatinius, and the attempted prosecution of Caesar, in respect of their breaches of the *maiestas* law.

Chapter 6 canvasses the breaches of the *maiestas* law of which Caesar is believed to have been guilty during his Gallic proconsulship. Attention is then directed to the reaction which Caesar's conduct provoked at Rome. The chapter examines the Optimate desire to prosecute Caesar for his

maiestas contraventions, as committed in both his first consulship and his Gallic proconsulship, and Caesar's determination to avoid such a prosecution, and concludes by considering this question as a factor relevant to the outbreak of the civil war.

The principal topic in Chapter 8 is a series of three cases during Caesar's dictatorship, in each of which Cicero appeared. These cases have been selected because of particular points of interest which they exhibit in regard to the nature of the *crimen maiestatis*. The chapter then examines the legal principles involved in the crowning of Caesar's statute and his salutation as 'king'. The chapter concludes with an examination of the *maiestas* implications of the literary 'war' which turned on the memory of Cato.

Chapter 9 is mainly devoted to a detailed examination of the evidence for Caesar's *lex Julia maiestatis*. The core of the investigation is supplied by certain passages in Book I of Cicero's *Philippics*, and the analysis leads to the conclusion that the content of Caesar's *maiestas* law can, despite the general view to the contrary, be specifically pinpointed, and that the historical background gives a clear indication of the date of the *lex* and of the circumstances which made its introduction necessary. The findings in regard to this law are submitted in support of 'the theory of the little laws'. The chapter concludes with an examination of the *lex Hirtia*, which is identified as the third of the other 'little laws of *maiestas*' mentioned in the proposition.

Chapter 10 (A) discusses the *lex Pedia*, and its extensive interpretation in connection with certain conspiracies against Octavian. This *lex* is identified as the fourth of the other 'little laws of *maiestas*' mentioned in the proposition. The argument in this regard is developed partly in Chapter 10 (A), and partly in Chapter 13.

Chapter 10 (B) discusses a number of conspiracies against Augustus. These have been selected because of their general significance for the *crimen maiestatis*, more particularly in that they demonstrate that the crime with which they were concerned was still the *crimen maiestatis populi Romani imminutae*, properly so called. They are also of interest because of the particular problems of legal interpretation and chronology which they pose.

Chapter 12 considers the relationship between defamation and *maiestas*, both in the Republic and in the Augustan Principate. After a survey of the position prior to Augustus, attention is given to the problem presented by the trial of Cassius Severus, and by Tacitus' assertion that it was in this case that Augustus first dealt with defamation under the guise of the *maiestas* law. After a full discussion of the evidence, the conclusion is reached that the case of Cassius Severus is closely connected with, and explicable in terms of, the conspiracy of A.D. 6, and a theory is submitted as to the manner in which Augustus made defamation a form of *maiestas*.

Chapter 13 examines the *maiestas* legislation of Augustus. The discussion turns on the juristic source-material, and in particular *Digest* 48.4. The juristic evidence for the *lex* is collated with the literary, and a proposal is made as to the probable content and date of the law. The findings are submitted in further support of 'the theory of the little laws'. The chapter concludes with an examination of three problems of interest posed by *Digest* 48.4.

The second approach to the *crimen maiestatis* turns on the question as to whether there was a transformation of the *crimen maiestatis populi Romani imminutae* at any stage during the period under discussion. In this regard the author postulates the theory which forms the second of the two propositions which the work attempts to defend, which is described as 'the theory of the unchanged *maiestas populi Romani*,' and which may be stated as follows:

At no stage in the Roman Republic or the Principate of Augustus did the technical legal concept of *maiestas populi Romani* cease to be the sole focal point of the *crimen maiestatis populi Romani imminutae*.

The proposition is linked to the following question: Is there any reason to believe that there came a time when *maiestas populi Romani* ceased to be the focal point of the crime, and when another connotation of *maiestas* took its place as the subject of the protection afforded by the *maiestas* laws? The answer to this question depends on whether there was a transformation, under Caesar or Augustus, of the concept

of *maiestas populi Romani*. If there was such a transformation it would mean that there was a fundamental change, whereby the technical legal concept of *maiestas populi Romani* was replaced by another technical legal concept, namely that of *maiestas Caesaris* or *maiestas principis*. Such a 'maiestas shift' from the Roman People to Caesar or Augustus would have had two consequences. Firstly, it would mean that Caesar or Augustus had become identified with the State, and solely expressive in his person of the *maiestas* of the State. In other words, the State would have become a special kind of juristic person, namely a 'corporation sole' in the person of Caesar or Augustus, rather than the kind of juristic person constituted by the *populus Romanus*. Secondly, such a change in legal personality would have required a re-orientation of the *crimen maiestatis*, for there would have had to be a new set of legal rules to protect the new *maiestas*. There would, in other words, have been a transformation of the crime of *maiestas* from the *crimen maiestatis populi Romani imminutae* to the *crimen maiestatis Caesaris (principis) imminutae*. The validity of the proposition depends on there having been no such transformation, and it is proposed to examine the evidence in this regard.

Chapters 5 and 6, apart from their relevance to the development of the *crimen maiestatis*, properly so called, also lay the foundation for consideration of a possible transference of *maiestas* to Caesar. The theme is then developed in Chapter 7, which attempts a detailed examination of the evidence. But as the date of Caesar's *maiestas* law is 47 B.C. (according to the author), or 46 B.C. (according to the authorities consulted), the inquiry is not pursued in detail beyond 46 B.C. The reason is that a *maiestas* shift to Caesar later than 46 B.C. would not have been reflected in a *maiestas* law, as a second *lex Julia maiestatis* (of Caesar) is not attested. In order to complete the presentation, however, the investigation is continued, although in brief, over the period 45-44 B.C. Further information, and in particular for the years 46 and 45 B.C., is presented in Chapter 8, when discussing the three trials at which Cicero appeared. Finally, the theory which is submitted in Chapter 9, in regard to the content of Caesar's *lex Julia maiestatis*, is also relevant to the question of a *maiestas* shift.

The conclusion is reached that there was no *maiestas* shift to Caesar, and that *maiestas populi Romani* remained the technical focal point of the *crimen maiestatis*.

The question of a *maiestas* shift to Augustus is taken up in Chapter 11. The anomalies arising out of the prosecution of the elder Julia and her paramours are analysed, and these trials are used as the frame of reference for consideration of a possible transference of *maiestas* to Augustus. There is an analysis of three elements which are believed to be crucial on this question, namely tribunician sacrosanctity, the *coniuratio* of 32 B.C., and the grant of the title *pater patriae* in 2 B.C. The conclusion reached is that there was no disturbance of *maiestas populi Romani* as the technical focal point of the *crimen maiestatis*, properly so called. It is found, however, that a new concept emerged, namely that of the 'majesty' of Augustus, which was analogous to *maiestas populi Romani*, but distinct from it. The protection of Augustan 'majesty' was not entrusted to the *crimen maiestatis*, but to a new charge which was introduced into the public criminal law, namely the charge of 'violated majesty'. It will be suggested that much of the confusion which surrounds the *crimen maiestatis* in the early Principate is due to the failure of both Roman and modern historians to appreciate the distinction between the *crimen maiestatis* and the crime of 'violated majesty'.

It remains to consider the orientation of the study. Although the *crimen maiestatis* is a 'legal' question, it is also a 'classical' question, and the present work is neither entirely 'legal' nor entirely 'classical'. The author doubts whether it is desirable, or indeed possible, to attempt to affix a label to a study of this nature. It is pertinent, in this regard, to consider the recent observations of Wolff (73): "It is a somewhat surprising and discouraging fact that most Latinists and Roman historians show at best but a perfunctory interest in the history and sources of the Roman Law . . . Nevertheless, legal writings form an important, in fact the most typically Roman, part of the whole of Roman literature; and the legal history of Rome has at every turn close contacts with its political, social and economic history." As a political crime, *maiestas* cannot be adequately considered without constant reference to the historical conditions prevailing at the various stages of its

development. But it was also part of the public criminal law, so that it cannot be approached properly without due regard to the legal system which evolved the crime, and the legal rules which were formulated concerning it.

The Roman Criminal Law has long been the special field of German-language scholars, such as Rein, Zumpt, Mommsen, Lenel, Hitzig, Pollack, Krüger, Wenger, Levy, Kübler, Lengle, Volkmann, Siber, Schulz, Brecht, Schönbauer, Gundel, Fuhrmann, Kelly, and Bleicken. The tendency of such authorities is to approach the subject on what may be termed a classico-legal basis. The exiguous nature of the juristic source-material makes a coherent picture impossible without constant reference to 'classical' sources, and the result is an exposition which is neither baldly legalistic nor solely historical. The initial object is the isolation of the fundamentals of an aspect of the criminal law, but the inquiry ranges far afield, and it is not easy to say whether the end result is a 'legal' study with a considerable 'classical' background, or a 'classical' study with a considerable 'legal' background. The author, if pressed to choose between these alternatives, would be inclined to prefer the latter, if only for the reason that the excision of all the legal texts would leave some sort of coherent picture, but the exclusion of all the literary sources and the historical background would leave no picture at all. The present study leans heavily towards the classico-legal approach, particularly as it has been developed by the German-language school. It is, indeed, only fair to say that the present work would not have been possible without access to a substantial segment of the learning of this school.

The classico-legal approach is not, of course, confined to German-language authorities. Much valuable work on Roman Criminal Law has been done by French-language scholars, such as Girard, Gaudemet and Scheltema; and by members of the Italian-language school, such as Rotondi, Ciaceri, Arangio-Ruiz, Riccobono, Flore, Volterra, and Archi. There is a lack of major works in English in the field of Roman Criminal Law. The works of Strachan-Davidson and Greenidge are on a level which is not often reached, even by foreign-language authorities, but the last work of either of them was published fifty years ago, and—regrettably—their respective purposes did not include a systematic treatise.

Heitland could have written a valuable work, but his purpose did not permit of it. Botsford is useful for tribunician jurisdiction in the Republic. The contribution of Jolowicz is significant, but the scope of his work dictated brevity.

On the specific question of *maiestas*, Merrill has published a significant paper on the loss of civic rights by those guilty of treason. There has been some valuable work by Rogers, but it falls, in the main, outside the period of the present study. Two full-length works devoted mainly to *maiestas* are disappointing, for neither Schisas nor Lear says very much which would have taken Mommsen by surprise. Hammond furnishes a fairly useful case-book for Augustus and his successors. H. Last has made valuable contributions, more particularly in the *Cambridge Ancient History*. Atkinson has produced an impressive paper on two *maiestas* trials. Smith has made a valuable contribution to the question of defamation and *maiestas*, and Badian is significant on certain individual trials. *Maiestas* has also been discussed by Chilton.

On other aspects of the criminal law, there have been significant discussions of criminal jurisdiction by McFayden, Marsh, A. H. M. Jones, and Stuart Staveley; of the forms of Roman criminal legislation by Daube; of the primitive criminal law by Von Fritz; and of extortion by Balsdon, Sherwin-White and Henderson. Various aspects of the criminal law have also been discussed by Charlesworth, Erwins, Grant, Hardy, Momigliano, Reid, and Stuart Jones.

The field has tended to be neglected in South Africa, perhaps because of the overriding importance of Roman Civil Law from the practical point of view. Mention should be made, however, of Gonin's paper on *perduellio*.

Three centuries ago the eminent Roman-Dutch jurist, Antonius Matthaeus, prefaced his discussion of *maiestas* with an apology: "Verum, cum de maiestatis iuribus accurate disseruerit Ioannes Bodinus . . . timui post Roscium in scenam descendere." Many knowledgeable men have trod the boards since 'Roscus', but the author, believing that there may still be room for a discussion of the *crimen maiestatis*, humbly ventures to take the stage.

PART ONE

Maiestas in the Roman Republic

The Roman Concept of Maiestas

A. THE MEANING OF MAIESTAS

Maiestas was a peculiarly Roman concept.¹ Greek authors, in default of an adequate equivalent for the word *maiestas*, resorted to approximations. Thus: τὴν ἀρχὴν καὶ τὴν δυναστείαν τοῦ δήμου τῶν Ῥωμαίων (Polyb. 21.32.3) is used for "imperium maiestatemque populi Romani" (Livy, 38.11.2). Other equivalents are θεϊότης, σεμνότης, ἀξιοπρέπεια, μεγαλοπρέπεια, μεγαλοσύνη (Dumézil, 9-10, 14) and μεγαλειότης, δόξα, ἐξουσία (Gundel, 295). For *crimen maiestatis* the usual rendering is ἀσέβεια and, in Byzantine times, καθοσίωσις.²

Etymologically *maiestas* is derived from *maior*.³ As *maior* expresses not an absolute value but the comparative degree, so *maiestas* is not an absolute quality but a relationship.⁴ This fact is fundamental to Roman *maiestas*. The word denotes an unequal relationship, with one component occupying the position of the *maior*, and the other that of the *minor*, but it denotes only a relationship, and not a quality or attribute existing in isolation. A man on a tightrope may have, in relation to the rope, an equilibrium depending on a number of qualities, such as muscular power, eyesight, and co-ordination. But the state of equilibrium is neither any one of those qualities, nor

¹ Sherwin-White, *Citizenship* 222-3; Dumézil, 14; Drexler, 196.

² Mommsen, *Straf* 540. But see p. 229 n.99a.

³ Rein, 504; Mommsen, *Straf* 538.2; Pollack, 3; Kübler, 542; Dumézil, 8; Wagenvoort, 120, 124; Lear, 13; Gundel, 298.

⁴ Dumézil, 8. Wagenvoort, 124, remarks that "... the maiestas populi Romani, the 'being greater' or 'superiority' of the Roman people, must always be measured according to its position compared with the surrounding world." Cf. Pollack, 3; McFayden, 208.

even their sum; it is rather the situation resulting from them.

Several authorities have drawn attention to the difficulty of defining *maiestas*.⁵ Part of the difficulty perhaps lies in the approach to *maiestas* as a quality rather than a relationship. Pollack (15) equates *maiestas* with *auctoritas dignitasque*, which is to take it as a sort of super-quality, to be defined only by defining each of the constituent terms. Even then the result is not a definition of *maiestas*, but a mere composite definition of *auctoritas-dignitas*. This leads to the dilemma posed by Hayakawa (172-3):

People often believe, having defined a word, that some kind of understanding has been established, ignoring the fact that the words in the definition often conceal even more serious confusions and ambiguities than the word defined. If we . . . try to remedy matters by defining words, and then, finding ourselves still confused, go on to define the words in the definitions of the defining words, we quickly find ourselves in a hopeless snarl. The only way to avoid this snarl is . . . [by] giving specific examples of what we are talking about.

Cicero refers to *maiestas* as *magnitudo quaedam*, and says that "maiestas est in imperii atque in nominis populi Romani dignitate"⁶ (*Part. Orat.* 30.105), and that *maiestas* is "amplitudo ac dignitas civitatis."⁷ These passages have been criticized as "nichts als Umschreibungen" (Mommsen, *Straf* 539.1). But closer examination of their contexts shows that no comprehensive definition is being attempted. Cicero shows (*Part. Orat.* 30.103ff.) how accuser and accused come to grips. He discusses the stage of *disceptatio* (30.105), and takes the

⁵ Thus Kübler, 542, 544: "Einer genauen Begriffsbestimmung entzieht sich das Wort"—"Ein scharff umrissener staatsrechtlicher Begriff ist maiestas nie gewesen". Cf. Fr. Taeger (cited by Gundel, 288): "Kaum ein römischer Begriff ist uns so geläufig wie maiestas, und kaum einer entzieht sich so leicht wie dieser jedem Versuch, ihn präzise zu erfassen." See also Mommsen, *Straf* 539.1; Pollack, 4; Jolowicz, 327-8; OCD 532 s.v. 'maiestas'; Drexler, 200.

⁶ *Maiestas* is the status resulting from the empire and renown of the Roman People. (tr.)

⁷ The grandeur and dignity of the State. (tr.). Cic. *Orat.* 2.39.164; cf. Cic. *Invent.* 2.17.53; Auct. *Herenn.* 2.12.17.

maiestas charge against Norbanus as an example. The defence, relying on its 'definition' of *maiestas*, contends that the conduct of the accused was not culpable. The accuser, relying on a different 'definition', claims that he is guilty. Cicero then states the issue: "minueritne maiestatem qui voluntate populi Romani rem gratiam et aequam per vim egerit."⁸ The misunderstanding of this passage seems to have originated with Quintilian (*Inst. Orat.* 7.3.35): "est interim certa finitio, de qua inter utramque partem convenit; ut Cicero dicit, maiestas est in imperii atque in nominis populi Romani dignitate."⁹ But Cicero, far from saying that both sides agreed on this 'definition', says: "exsistit illa disceptatio". Elsewhere (*Orat.* 2.39.164) Cicero merely gives an example to guide a budding orator on the method of formulating a 'definition', so as to fit it to the facts of his case. He does not say "maiestas est amplitudo ac dignitas civitatis" but "si maiestas est amplitudo ac dignitas civitatis, is eam minuit qui exercitum hostibus populi Romani tradidit."¹⁰ He is showing the student how to frame a 'definition' if he has to prosecute a case of *exercitus traditio*. Discussing the *constitutio definitiva*, which is the issue arising when there is a dispute as to the name by which an act is described, he lays down that the first function of the accuser is to propose a crisp definition. As an example, purely of a definition which would suit the accuser's purpose, he gives: "maiestatem minuire est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare." (*Invent.* 2.17.53).¹¹ He continues: "post erit infirmanda adversariorum descriptio. ea autem infirmabitur, si falsa demonstrabitur." (Cf. *Auct. Herenn.* 2.12.17).¹²

The significant point about these passages is the

- Is *maiestas* diminished by an act which is desired by and advantageous to the Roman People? (tr.)
- Sometimes both sides agree on a definition: as Cicero says, *maiestas* is the status resulting from the empire and renown of the Roman People. (tr.)
- ¹⁰ If *maiestas* is the grandeur and dignity of the State, it is diminished by surrendering an army to an enemy of the Roman People. (tr.)
- ¹¹ It is a diminution of *maiestas* to detract from the dignity, grandeur or power of the People or of those on whom it has conferred authority. (tr.)
- ¹² Next, the opponent's submission should be invalidated; this is done by showing it to be false. (tr.) But see pp. 51-53 for the significance of these passages in regard to the *lex Appuleia maiestatis*.

springing to mind of the words *magnitudo*, *potestas*, *imperium*, *dignitas* and *amplitudo* when *maiestas* is mentioned. Cicero, with perhaps greater semantic insight than his critics, does not attempt a comprehensive definition.¹³ Rather does he give "specific examples of what [he is] talking about", namely, certain attributes which contribute to the *maiestas* relationship. The impairment of any of these attributes tends to 'diminish' Roman *maiestas*, that is, to prejudice the continuance of a relationship in which the Roman People is the *maior*. These attributes cannot be stated exhaustively, but an attempt can be made to analyse certain aspects which the Romans regarded as necessary features of their *maiestas*, an analysis which will perhaps make clear some of the principles which guided them when they came to formulate the *crimen maiestatis*. It is proposed to pursue the concept of *maiestas* in its principal connotation, as a relationship between sentient beings.¹⁴

B. THE MAIESTAS OF THE GODS

Maiestas was regarded by the Romans as primarily expressive of a relationship between the gods as *maiores* and men as *minores*, arising out of the inherently superior nature of the former.¹⁵ The earliest mention of *maiestas*¹⁶ is in the *Aegisthus* of Livius Andronicus, where the divinity presents herself as *maiestas mea*. The sources stress the divine origin

¹³ It is doubtful if Cicero would have approved the purple passage of Drexler (205-6): "Maiestas ist dem, der sie besitzt von Natur wesentlich eigen. Sie ist . . . das Numinosum, und daher sowohl ein Fascinosum wie ein Tremendum, d.h. sie ist von stärkster unmittelbarer, suggestiver Wirkung. Sie ist Macht, aber nicht die Macht äusserer Mittel, sondern allein kraft des Eindrucks, dem sich niemand entziehen kann, der ihr begegnet. Sie ist 'Herrlichkeit' und daher mit den Sinnen wahrnehmbar, ein ästhetisches Phaenomenon. Sie erweckt und fordert Scheu und Verehrung, ja Unterwerfung, sie bindet und verpflichtet und ist daher zugleich etwas Sittliches, im tiefsten wirklichkeitsbezogenen, d.h. religiösen Sinn."

¹⁴ There are other connotations. Wagenvoort (106f., 123 and n. 3) cites the *maiestas* of herbs, oxen, and the power of speech in support of his *mana* concept.

¹⁵ Dumézil, 9; Drexler, 196; Kübler, 543; Wagenvoort, 123.

¹⁶ Although Gundel (289) holds that this reference "natürlich gar keinen Anhaltspunkt geben kann".

of *maiestas*: "verum in deis generaliter primum maiestatem ipsius eorum naturae venerabimur, deinde proprie vim cuiusque et inventa, quae utile aliquid hominibus attulerint"¹⁷ (Quint. *Inst. Orat.* 3.7.7; cf. Sen. *Ben.* 4.19.4). Cicero argues that if the gods do not disclose the future to men, the reason may be: "non censent esse suae maestatis praesignificare hominibus quae sunt futura"¹⁸ (*Divin.* 1.38.82). He proceeds to controvert this postulated reason, and concludes: "neque hoc alienum ducunt maiestate sua; nihil est enim beneficentia praestantius."¹⁹ The reference to *beneficentia* underlines something which the Romans regarded as an integral feature of the *maiestas* relationship. Men are under a duty of *veneratio* towards the gods, but in turn the gods owe them benefits. The bilateral obligations which the relationship implies are clearly expressed by Horace (*Carm.* 3.6.5): "dis te minorem quod geris, imperas".²⁰

The divine origin of *maiestas* is sketched by Ovid (*Fasti* 5.17ff.) in a passage which draws attention to several important aspects of the concept. Before the birth of *Maiestas* there were no *maior-minor* relationships (v. 18), and Jack was as good as his master (vv. 19f.). *Maiestas* is immediately *magna* (vv. 25f.)—clearly so, for the relationship exists as soon as there is a *maior* (cf. Wagenvoort, 122)—and regulates all relationships: "mundum temperat omnem" (v. 25). There is bilaterality of obligation, *pretium dignis* in return for *suspectus honorum* (vv. 31f.). Moral associations are emphasized: *Maiestas* was born of Honor and 'decens Reverentia' in lawful wedlock (vv. 23f.), and was associated with Pudor (v. 29). *Maiestas* had to be defended by force of arms against the assault of the

¹⁷ We revere the gods in general for their innate *maiestas*, and each in particular for his power to devise benefits for mankind. (tr.)

¹⁸ They do not deem it appropriate to their *maiestas* to reveal the future to men. (tr.)

¹⁹ They do not think this unsuited to their *maiestas*: for nothing is more readily available than beneficence. (tr.) The passage seems to be misunderstood by Drexler (199), who cites only the first-mentioned (hypothetical) case. But it is clear that Cicero raises the first possibility only in order to explode it, and makes his definitive point in the second statement. Cf. Cic. *Nat. Deor.* 2.30.77.

²⁰ Because you show yourselves subservient to the gods, therefore do you rule. (tr.)

Giants (vv. 35-44). *Maiestas* was transmitted from the gods to the founders of Rome (vv. 45-8).

C. MAIESTAS POPULI ROMANI

Parallel to the *maiestas* relationship between gods and men was that between Rome and other peoples (Wagenvoort, 123; Dumézil, 11). When the Romans attributed *maiestas* to themselves they were mindful of its divine origin (Drexler, 196). The Gauls, bursting into Rome in 390 B.C., beheld men whose *maiestas*, as revealed by their gravity of countenance, closely resembled that of the gods (Livy, 5.41.8. Cf. Cic. *Phil.* 6.19). Drexler (197) doubts whether the sources anywhere distinguish between the *maiestas* of the gods and that of the Roman People. This circumstance suggests that the change from one focal point of *maiestas* to another was accepted as a natural development, inherent in the concept.

Juno, consenting to the union of Trojans and Latins from which the Roman race will spring, prays for one concession:

Illud te, nulla fati quod lege tenetur,
pro Latio obtestor, pro maiestate tuorum:
cum iam conubiis pacem felicibus, esto,
component, cum iam leges et foedera iungent,
ne vetus indigenas nomen mutare Latinos,
neu Troas fieri iubeas Teucrosque vocari,
aut vocem mutare viros, aut vertere vestem.
sit Latium, sint Albani per saecula reges,
sit Romana potens Italia virtute propago;
occidit, occideritque sinas cum nomine Troia.

(Vergil, *Aen.* 12.819-28)²¹

Dumézil (10f.) understands the passage as emphasizing the special relationship between Jupiter and the Latins, as

²¹ In furtherance of the *maiestas* of the Latins, thy people, I crave a boon opposed to the destined order. When peace is signed, and sealed with marriage rites, command not the native Latins to change their ancient name, nor to become Trojans or be called Teucrians, nor to change their language or their costume. Let Latium and the Alban kings endure for ever; let there be a Roman race, mighty in Italian valour. Troy has fallen; let her so remain, together with her name. (tr.)

the cultivators of Iuppiter Latiaris (hence: *pro maiestate tuorum*).²² Because of that relationship the Latins are superior to the Trojans, who are the simple protégés of Venus, and the characteristic Latin name, language and customs (particularly clothing)²³ should not be allowed to disappear before those of the Trojans, militarily superior though they may be.

It may be objected that the Trojans, as the conquerors, can scarcely be said to be the inferiors of the Latins.²⁴ Indeed Jupiter has already made it clear (vv. 798ff.) that there can be no setting aside of Trojan physical superiority. Two interpretations seem possible. If Dumézil (11.1) rightly takes '*pro maiestate tuorum*' to mean 'by reason of, in proportion to', then it must be assumed that Vergil intends to distinguish between the *maiestas* resulting from physical superiority and that which accompanies pre-eminence of language and custom; in the latter sense Latin *maiestas* is regarded as already existing. But if *pro* means 'on behalf of, in furtherance of', the unreal partition of *maiestas* is avoided, and Latin *maiestas* does not yet exist. This is perhaps Vergil's whole point. Juno proposes a compact, a concession in return for the withdrawal of her opposition—in other words, a bilateral *maiestas* agreement. She well knows that what she asks will not follow in the ordinary course: *nulla fati quod lege tenetur*. The *lex fati* marks the Trojans out for domination and *maiestas*, but Juno asks that the natural result be avoided. This, rather than any thought of Jupiter's superiority to Venus, may be Vergil's meaning.²⁵ The passage has echoes elsewhere, particularly in regard to language and clothing as elements in *maiestas*: "magistratus vero prisca quantopere suam populi que Romani

²² Cf. Bailey, 171-2: "Thus by his character as the supreme protector of the State . . . Iuppiter rose . . . to a position of unchallenged dignity; and his *maiestas* was the majesty of Rome itself. . . . Iuppiter became in fact a magnified tribal god, and in worshipping him the Roman people saw but the reflected image of itself."

²³ Cf. Vergil, *Aen.* 1.281f.: "mecumque fovebit/Romanos rerum dominos, gentemque togatam".

²⁴ This point was made by Professor T. J. Haarhoff of the University of the Witwatersrand, in the course of discussion.

²⁵ Cf. Servius: "si fataliter imminet ut a Troianis origo Romana descendat, Troiani Italorum nomen accipiant: ut Romani de Italidis, non de Troianis videantur esse progeniti." Serv. ad *Aen.* 1.823.

maiestatem retinentes se gesserint, hinc cognosci potest, quod . . . illud quoque magna cum perseverantia custodiebant ne Graecis umquam nisi Latine responsa darent"²⁶ (Val. Max. 2.2.2); "neque Romani civis [quidquam est] praeter habitum vestitumque et sonum Latinae linguae"²⁷ (Livy, 29.17.11).

Roman *maiestas* was primarily an attribute of the Roman People as a whole—*maiestas populi Romani*—in relation to other peoples.²⁸ The Roman People, in virtue of its *maiestas*, made claim to "Gehorsam, Untertänigkeit und Reverenz" from all other peoples (Kübler, 542). That claim might be contested, and the Romans had to be alert to maintain it; the relationship might be breached (*laedi, violari*), and the superiority of the Romans diminished or lessened (*imminui, minui, deminui*), so that *maiestas* had at all times to be defended and preserved (*servari, conservari*)—(Drexler, 196, 198). The point is fundamental. The *maiestas* relationship was an uneasy equilibrium, always exposed to disturbance, and always needing positive action for its maintenance.

When the Romans regulated their relations with other states they sometimes required the other contracting party to bind itself to respect Roman *maiestas*. The *locus classicus* is Livy 38.11.2 on the treaty with Aetolia in 189 B.C.: "imperium maiestatemque populi Romani gens Aetolorum conservato sine dolo malo"²⁹ (cf. Polyb. 21.32.3). The clause *maiestatem populi Romani comiter conservanto* was included in the treaty with Gades in 78 B.C.—which was possibly a renewal of a similar treaty of 206 B.C. (Gundel, 291-2)—and the relationship thus established is analysed by Cicero (*Balb.* 16.36) as follows: "Deinde cum alterius populi maiestas conservari iubetur, de altero siletur, certe ille populus in superiore condicione causaque

²⁶ The extent to which the magistrates of old maintained their *maiestas*, and that of the Roman People, may be gauged from the fact that they consistently took care never to reply to Greeks except in Latin. (tr.).

²⁷ No mark of a Roman citizen remains save the style of dress and the sound of the Latin language. (tr.).

²⁸ Wagenvoort (123) cites, as equivalents of *maiestas populi Romani*: *maiestas populi*, *maiestas populi Romani Quiritium*, *maiestas publica*, *maiestas rei publicae*, *maiestas civitatis*, *maiestas patriae*, *maiestas nominis Romani*.

²⁹ The Aetolians are to preserve the empire and *maiestas* of the Roman People, without deceit. (tr.).

ponitur cuius maiestas foederis sanctione defenditur."³⁰ Although the *foedus iniquum*, namely the form of treaty which included a *maiestas* clause, was designed to impose subordination to Rome more directly and effectively than a *foedus aequum*,³¹ the Romans were concerned to present the *maiestas* relationship as not only imposing obligations on the *minor*, but conferring benefits as well. Cicero (*Balb.* 16.37) makes the point in his discussion of the Gaditanian treaty: "Potest esse ulla denique maiestas, si impedimur quo minus per populum Romanum beneficiorum virtutis causa tribuendorum potestatem imperatoribus nostris deferamus?"³² This aspect of *maiestas* received juridical recognition, for the jurisconsult Proculus was at pains in the first century A.D.³³ to emphasize the 'free' status of the *maiestas minor*:

Liber autem populus est is, qui nullius alterius populi potestati est subiectus: sive . . . foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viribus nobis pares sunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est. (*Dig.* 49.15.7.1)³⁴

³⁰ When it is stipulated that the *maiestas* of the one state be respected, but there is no mention of the other state, it is clear that the superior position is that of the state whose *maiestas* is protected by the treaty. (tr.)

³¹ On the *foedus iniquum* as an instrument of imperialism see particularly Sherwin-White, *Citizenship* 112-25, 149-63. Cf. Gelzer, *RE* 12.959-60; Grant, 401-5. Coli (372) believes that until the Social War the purpose of the *maiestas* treaty was to vest the *populus Romanus* with the exclusive command, and therefore with *imperium, vis-à-vis* the Italian cities, but this does not account satisfactorily for the Aetolian and Gaditanian treaties. For the view that the *maiestas* treaty was not older than *circa* 206 B.C. see Gundel, 293-4. Täubler (62-6, 50-1, 56, 450-1, 456) is still authoritative on the reconstruction of the form of a *maiestas* treaty and on the fluctuations in the degree of subordination which such a treaty imposed.

³² Can there be any *maiestas* at all if we are not able, through the Roman People, to empower our commanders to reward worth with benefits? (tr.)

³³ For Proculus see Schulz, *Legal Science* 103, 119, 120.

³⁴ A free people is one which is not subject to the power of another people.

Proculus here draws attention to two concepts of importance to an understanding of *maiestas*, namely *dignitas*³⁵ and *vires impares*.³⁶ *Dignitas* was "der dem Senator zuerkannte Rang im politischen Leben" (Gelzer, 83), or "rank, prestige and honour" (Syme, 13). *Dignitas* should not, however, be identified with *maiestas* merely because Cicero uses it by way of illustration in some of his *maiestas* passages.³⁷ The parallel which Cicero draws is that, as a prominent man has rank and prestige *vis-à-vis* other men, so Rome has *maiestas* as against other peoples. *Dignitas* connotes a man's place in the queue within the Roman body politic; *maiestas* signifies Rome's place in the international field. Proculus' notice of *vires impares* on the part of the *minor* as a feature of *maiestas* raises the curious distinction between theory and practice which marked the attitude of the Romans to their *maiestas*. During the Second Punic War, Hanno, attempting to detach Nola from the Roman alliance, "Hannibalis virtutem fortunamque extollit: populi Romani obterit senescentem cum viribus maiestatem"³⁸ (Livy, 23.43.10). The Nolans base their rejection of the Carthaginian overtures on the advantages inherent in the Roman connection: "multos annos iam inter Romanum Nolanumque populum amicitiam esse, cuius neutros ad eam diem paenitere; et sibi, si cum fortuna mutanda fides fuerit, sero iam esse mutare"³⁹ (Livy, 23.44.1). This passage has persuaded modern scholars that physical superiority was not essential to *maiestas* (Dumézil, 11 and n.3), and even that

Thus a treaty may provide that the one people is duly to respect the *maiestas* of the other: with this proviso, that the one people is regarded as superior, not that the other is regarded as not free. As we regard our clients as free, although not our equals in authority, status or strength, so it should be understood that those who are bound duly to respect our *maiestas* are free. (tr.) On the meaning of *libertas* see Kunkel, 325-46. Cf. Grant 401-5.

³⁵ Cf. *dignitas* in Cic. *Orat.* 2.164; *Part. Orat.* 105; *Invent.* 2.53; Auct. *Herenn.* 4.25.35.

³⁶ *Auctoritas* was not an element of *maiestas* in the Republican period (Gundel, 300-1).

³⁷ Cic. *Part. Orat.* 30.105; *Orat.* 2.39.164; *Invent.* 2.17.53.

³⁸ He praised the valour and good fortune of Hannibal and belittled the *maiestas* of the Roman People which, in common with its military strength, was on the wane. (tr.)

maiestas could not be based on external power at all (Drexler, 201). This is a tribute to the skill of Roman propagandists, for after stating the noble sentiments which moved the Nolans, Livy almost casually discloses the real reason: "cum iis qui ad sese tuendos venissent omnia sibi et esse consociata et ad ultimum fore."⁴⁰ In case the recollection of *maiestas* had been dimmed, *ii qui venissent* would remind the Nolans of their duty. Elsewhere Livy makes it even plainer that strength was indispensable to *maiestas*: "huic tantae tempestati cum se consules obtulissent, facile experti sunt parum tutam maiestatem sine viribus esse" ⁴¹ (2.55.9).

At the same time, however, Rome resolutely set her face against a relationship based solely on force. There can be no doubt that there was, on the Roman side, a deliberate acceptance of the fact that a strong obligation rested on the *maior* to maintain a high moral standard in its dealings with the *minor*. It was immoral, and therefore culpable under the *crimen maiestatis*, for a proconsul to execute a Gaul for the entertainment of his mistress; the perpetrator was stigmatized "quod amplissimi honoris maiestatem tam taetro facinore inquinaverat",⁴² in that "cum probro privato coniungeret imperii dedecus".⁴³ It was immoral to ill-treat Gallic (Livy, 6.1) or Punic prisoners of war (Diod. 24.19). The principle received formal legal expression under Diocletian: "nihil enim nisi sanctum ac venerabile nostra iura custodiunt et ita ad tantam magnitudinem Romana maiestas cunctorum numinum favore pervenit, quoniam omnes leges suas religione sapienti pudorisque observatione devinxit"⁴⁴ (*Collatio* 6.4.6). The law-minded Romans consistently stressed that the *maiestas* relationship

³⁹ For many years there had been friendship between the Roman and Nolan peoples and neither of them had ever regretted it. Even if a change of fortune ought to be accompanied by a change of allegiance, it was too late for them to make the change. (tr.)

⁴⁰ They had made common cause with those who had come to protect them, and would do so to the end. (tr.)

⁴¹ The consuls, facing a crisis of such magnitude, readily realized that *maiestas* without strength was insufficiently protected. (tr.)

⁴² As having polluted the *maiestas* of his distinguished office by so foul a crime. (tr.)

⁴³ His personal misdeed brought disgrace on the empire. (tr.) Sen. *Controv.* 9.25. Val. Max. 2.9.3. Cic. *Senect.* 12.42.

⁴⁴ See P. 12.

was a bilateral contract, with duties and benefits on both sides. Cicero notices that *conservanto* in the *maiestas* clause of a treaty is a term more apt "in legibus quam in foederibus" (*Balb.* 16.36). It is no accident that the verb *praestare* is used so frequently in relation to *maiestas*,⁴⁵ for it regularly describes one of the duties to which a contracting party was bound in Roman Law. Thus: "obligationum substantia . . . [in eo consistit] ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum".⁴⁶ As Dumézil (11) aptly puts it: "Aussi sa maiestas n'a-t-elle pas été la conséquence fortuite, mais la justification presque juridique, presque rationnelle, de son accroissement et de son empire."⁴⁷

D. DERIVATIVE MAIESTAS

Magistrates had *maiestas*,⁴⁸ but the concept was a limited one, for a magistrate had *maiestas* solely in virtue of his office, which he held only because the *populus Romanus* had appointed him to it: "maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare".⁴⁹ Magisterial *maiestas* was an extension of *maiestas populi Romani*, and subordinate to it (Drexler, 197). The consul P. Valerius Poplicola lowered his *fascēs* when he addressed a *contio*, and so admitted that his *maiestas* was inferior to that of the People (Livy, 2.7.7). It was required of Appius Claudius that he restrict his consular *maiestas* so as not to disturb the harmony of the State (Livy, 2.57.3). This

⁴⁴ Our laws safeguard only what is hallowed and reverend. Roman *maiestas* has, by the united favour of the gods, reached such a peak because it has kept all its laws within the bounds of religious scruple and decency. (tr.)

⁴⁵ Cic. *Divin.* 1.38.82; *Nat. Deor.* 2.30.77. Ovid, *Fasti* 5.46.

⁴⁶ The substance of an obligation consists in binding another to give us something or to do or perform something for us. (tr.) *Dig.* 44.7.3 pr; cf. Gaius 4.2.

⁴⁷ Utschenko (cited with approval by Gundel, 288.1) takes the diametrically opposite view: "Maiestas gehöre nicht zu den Begriffen, die das ius bildeten, sondern das fas."

⁴⁸ Pollack, 101-11; Kübler, 543; Wagenvoort, 125.

⁴⁹ Cic. *Invent.* 2.17.53. Cf. Pollack, 101-2, 106, 164; Wagenvoort, 125. Wenger (*Review of Pollack* 486) regards magisterial *maiestas* as historically older than *maiestas populi Romani*.

further gradation of *maiestas* agrees with the position of the *populus Romanus* as a *minor* as against the gods, but a *maior* as against other peoples, for the *maiestas* relationship was a hierarchy, and the subordination of one *maiestas* to another was integral to the concept (Dumézil, 9). This was possible only because *maiestas* was a relationship, and not an attribute in isolation. A magistrate, possessing no absolute attribute of *maiestas*, could not maintain his *maiestas* against the Roman People. The latter was the *maior* in relation to its delegate, the magistrate, and he in turn was the *maior* in relation to individual citizens.

It has been suggested that the Senate, as a body, possessed *maiestas* (Wagenvoort, 126-7), but the better view is that in the Republic *maiestas* was confined to the People and its magistrates, with *auctoritas* as the appropriate expression for the Senate's position.⁵⁰ It has also been said (Dumézil, 12) that the concept of *maiestas plebis* arose during the struggle between the orders: "Maiores vestri, parandi iuris et maiestatis constituendae gratia, bis per secessionem armati Aventinum occupavere".⁵¹ In this connection Dumézil (loc. cit.) takes "parandi . . . gratia" to mean 'to establish their natural superiority', that is, a superiority which in fact existed; in virtue of its numerical superiority the plebs could have existed without the patrician minority, but the converse was not possible. No doubt *maiestas*, in the general sense of a *maior-minor* relationship, is descriptive of the relationship between plebeians and patricians, but when so used it does not connote *maiestas populi Romani*. It should be emphasized that the legal affiliations of *maiestas* (pp. 8-12) are of paramount importance. Those affiliations applied exclusively to *maiestas populi Romani*, and not to any other concept to which the word *maiestas* may have been loosely attached. The concept of *maiestas populi Romani*, in the sense of that particular *maior-minor* relationship which was the only such relationship to be recognized by Roman Law, was a technical legal concept of such a distinctive and exclusive kind that it would not be incorrect to write it as *maiestaspopuli-*

⁵⁰ Mommsen, *Staat* 1032, 1033 and n.1; Balsdon, *Auctoritas* 43-4.

⁵¹ Your ancestors, in order to secure their rights and establish their *maiestas*, twice made armed secessions to the Aventine. (tr.) Sall. *Jug.* 31.17.

romani. In the same way as *paterfamilias* meant a great deal more than the neutral 'father of a family', so *maiestaspopuliromani* was an indivisible expression, greater than and different from the sum of its parts, and connoting a specific legal notion with external and internal manifestations. Externally the concept meant the supremacy of Rome as against all other peoples, and received its legal expression in the *maiestas* treaty, the sanction of which was war. Internally it meant the supremacy of the *populus Romanus*, that is, the State, over the magistrates and the general body of citizens, and received its legal expression and sanction in the *crimen maiestatis imminutae*. The crime of 'diminished *maiestas*' is 'definable' no more readily than the concept of *maiestas* itself, but the 'definition' of McFayden (208) will serve as a rough guide, namely,

conduct tending to diminish the 'greatness', i.e. the power and dignity of the Roman People—including . . . assistance rendered to an enemy, or levying war against the government, but also any maladministration of provincial or other public office which tended to weaken the empire or injure the good name of Rome.

Valerius Maximus, in a chapter entitled *de maiestate*, gives a number of examples of *maiestas clarorum virorum*. This follows a chapter entitled *de censoria severitate*, and begins with the observation: "est et illa quasi privata censura maiestas clarorum virorum, sine tribunalium fastigio, sine apparitorum ministerio potens in sua amplitudine obtinenda."⁵² The *maiestas* here discussed is not the concept which has been analysed. The *clari viri* are not examined as magistrates of the Roman People,⁵³ and the examples given show that the protection of their *maiestas* was not to be found in the law, but in their own dignity. Some of the examples may be noticed, however, as they offer useful illustrations of the moral connotations of *maiestas*. When Metellus was charged with

⁵² There is also a sort of private censorship, known as the *maiestas* of famous men, which maintains its grandeur without the trappings and ministrations of formal justice. (tr.) Val. Max. 2.10.

⁵³ This is clear from the pun (2.10pr): "quam recte quis dixerit longum et beatum honorem esse sine honore".

extortion the Court refused to look at his *tabulae*, holding that the proofs of honest administration were not in his records but in his way of life (2.10.5). P. Rutilius, having been convicted of extortion, was so received by the cities of Asia that his journey was a triumph rather than exile (2.10.5). The Cimbrian appointed to kill Marius was so overwhelmed by his *claritas* that he cast away his sword and fled (2.10.6). When M. Porcius Cato attended the theatre the people did not dare to ask that the *mimae* disrobe (2.10.8).

The Origin of the Crimen Maiestatis

A. PERDUELLIO IN THE THIRD AND SECOND CENTURIES B.C.

A *lex maiestatis* which was introduced in the first or second tribunate of L. Appuleius Saturninus, in 103 or 100 B.C., was probably the first statutory recognition of the *crimen maiestatis*,¹ and it is presumably with this in mind that H. Last^{1a} expresses the opinion that the *crimen maiestatis* was 'invented' in 103 B.C.; his argument is to the effect that until the law of Saturninus the only competent charge against those, particularly generals, who acted to the detriment of the State was one of *perduellio*. Professor Last also believes that the crime of *perduellio* was ill-suited to the purpose of the Popular faction, as that purpose was revealed in a series of prosecutions of generals in the last decade of the second century B.C., and says that Saturninus found a more suitable remedy in the 'invention' of *maiestas*. The suggestion will be, however, that the sources mention the *crimen maiestatis* as early as the third century B.C., and that there is nothing anachronistic in such references. It will also be suggested that even the absence of the word *maiestas*, in relation to the criminal law, does not necessarily mean that the *crimen maiestatis* did not exist before Saturninus, for specific designation of crime was exceptional in the earlier Republic (Mommson, *Straf* 527) and, in common with several other crimes, the pre-statutory existence of *maiestas* is largely a matter of inference.

The relationship between *perduellio* and the *crimen maiestatis* is a skein so tangled that its unravelling depends

¹ But see p. 34.

^{1a} *CAH* 9.159ff., 296.

largely on the individual observer's point of view. Some of the attempts which have been made to state the difference between the two crimes will serve to illustrate the point.

Zumpt (2.1.235) says that every capital charge in the *comitia* was *perduellio*; but this refers only to the procedure, and diminution of *maiestas* was always a separate crime. In Mommsen's view (*Straf* 539) every act hostile to the State was *maiestas*, but not every form of *maiestas* was necessarily hostile to the State; *maiestas* included *perduellio*, but had a wider scope, a different procedure, and a lesser penalty (Cf. *OCD* 663). Kübler (545) believes that the distinction turned 'nicht um zwei konzentrische, sondern eher um zwei sich schneidende Kreise'. Brecht (*Perduellio* 264-5) considers that *perduellio* was never the subject of statutory regulation, being simply whatever an accuser could make of it before the People; whereas at an early date *maiestas* was determined by statutory rules.²

In recent years it has been realized that the correct approach to Roman Criminal Law is by way of the procedure which was adopted for the punishment of crime, rather than by attempting to differentiate one crime from another on the basis of watertight compartments, each with its appropriate component of substantive facts. This view has been crisply stated by Brasiello (cited with qualified approval by Archi, 34):

È il processo, o meglio il tipo di processo, che conduce alla repressione di alcuni fatti, che imprime a quei fatti un determinato carattere; ed è opportuno che segua anche la precisazione delle linee fondamentali della repressione, in quanto la pena assume una importanza, e dà al fatto una impronta, che manca nel diritto moderno. Tutta la evoluzione storica dei singoli crimini è un funzione della evoluzione del processo, e anche della repressione.³

² For other views see Rein, 473-80; Schisas, 12-13.

³ Cf. Henderson, 78. This view is, of course, not entirely new. A similar approach is formulated by Zumpt (2.1.235), as far as *perduellio*—but not *maiestas*—is concerned, and Pollack (171-7) has developed a theme which gives a valuable lead to the essential distinction between *perduellio* and *maiestas* (pp. 25-6). The merit of modern scholars such as Brasiello and Archi is that they have attempted to find a way out of the cul-de-sac in which the study of Roman Criminal Law was trapped when, as a result of Mommsen's monumental *Strafrecht*, there seemed to be nothing left to say.

The problem of *perduellio* and *maiestas* should be linked to the jurisdiction of the popular assembly sitting as a court—*iudicium populi*. It is generally accepted that in the third and second centuries B.C. political prosecutions were brought exclusively by plebeian tribunes and aediles. Girard (*Organisation* 239) puts it as follows:

Ils [sc. les tribunes] sont arrivés à s'arroger le monopole de fait des poursuites politiques . . . Les chefs révolutionnaires de la plèbe sont, après l'égalisation des patriciens et des plebeiens, devenus . . . les magistrats de l'État les plus directement préposés à la surveillance du fonctionnement régulier de la constitution.⁴

The juridical basis of the criminal jurisdiction of plebeian magistrates is, however, disputed. Mommsen⁵ has postulated a "universal provocation" theory, according to which magisterial *coercitio*,⁶ which was the power to inflict punishment at discretion, became *judicatio* (trial according to rules of law) whenever a magistrate imposed a capital sentence or a fine exceeding 3020 asses (the *multa maxima*). In either event the accused had the right of *provocatio ad populum*—an appeal to the *comitia centuriata* in capital cases, and to the *comitia tributa* in the case of a *multae inrogatio*.⁷ The magistrate pronounced judgment in the last of the three *contiones* which made up the *anquisitio* which he conducted, so that the proceedings before him constituted the trial of first instance, and the proceedings in the *comitia* were purely appellate.⁸ Mommsen's theory has been challenged by Brecht (*Komitiaverfahren, passim*), who believes that the comitial process was appellate only when the magistrate who conducted the *anquisitio* had *imperium*. A plebeian tribune or aedile, lacking *imperium*,

⁴ Cf. Mommsen, *Straf* 156.2; Greenidge, *Procedure* 329; Botsford, 317; Strachan-Davidson, 1.107; Lenglé, *Straf* 15; Siber, *Analogie* 7, *Verfassung* 228; Jolowicz, 323-4; Bleicken, 358ff.; Villers, 310-1; Niccolini, 113, 126-9. A tribune could not, in strict law, convene or conduct the *comitia centuriata*, but did so by 'borrowing the auspices' from a praetor—Mommsen, *Staat* 1.195; Strachan-Davidson, 1.156-8; Botsford, 245; Siber, *Verfassung* 228.

⁵ Mommsen, *Straf* 35ff., 40, 135ff., 167, 457, 473ff.; *Staat* 1.137f., 150, 162ff.; 3.1.354.

⁶ See Strachan-Davidson 1.98ff. for a clear exposition of this concept.

could not pronounce judgment, and merely conducted a preliminary inquiry, at which he acted not as a judge, but as a prosecutor who proposed a penalty. The trial of first instance was in the *comitia*, the magistrate again acting as a prosecutor. Bleicken (*passim*), re-examining the whole question, holds that there was no 'true' *provocatio*. A plebeian threatened with patrician coercion would appeal to a tribune, who would introduce a plebiscite in the *concilium plebis*. As this was prior to the *lex Hortensia* of 287 B.C. the plebiscite had no legal force, but gave the patrician magistrate notice of the will of the plebs. Thereafter, in the final stage, the third Valerian gave the tribunes the exclusive right to prosecute political crimes and made the informal appeal to the plebs unnecessary, as the sole jurisdiction of the tribunes was a sufficient safeguard against patrician magistrates. It is felt, however, that it does not make much practical difference whether *provocatio* is regarded as appellate or of first instance. In either event there was a final decision by the People, pursuant to proceedings whose initiation was the exclusive province of plebeian magistrates.

Perduellio was related to a *perduellis* or enemy, particularly an internal enemy.⁹ Hence the notion that it corresponded to modern treason, a parallel which fails in the earliest known case, for it is not possible on this basis to explain why the trial

⁷ Capital *provocatio* traditionally originated with a *lex Valeria* in 509 B.C., followed by a *lex Valeria Horatia* in 449 B.C. and a *lex Valeria* in 300 B.C.—Cic. *Rep.* 2.53f.; Livy 3.20.7; 3.55.4; 10.9.3ff. The current view is that only the third Valerian is historic—Heuss, 93ff., 114ff.; Bleicken, *RE* 23.2.2446; Stuart Staveland, 415. Siber (*Provocatio* 379, *Verfassung* 44ff.) rejects the first Valerian, but believes that *provocatio* was introduced by the XII Tables. The traditional laws on the *multa maxima* are the *lex Aternia Tarpeia* of 454 B.C., the *lex Menenia Sestia* of 452 B.C., and the *lex Julia Papiria* of 430 B.C. Dionys. 10.50.1f.; Livy, 4.30.3. Stuart Staveland (421) believes that *provocatio* was first introduced in respect of the *multa maxima*, and later in respect of capital sentences. Bleicken, *RE* 23.2.2451 contra.

⁸ Mommsen is supported by Girard, *Organisation* 110ff.; Strachan-Davidson, 1.133ff. (but with reservations, 104); Schulz, *Principles* 173; Lenglé, *Straf* 16; Jolowicz, 324ff.

⁹ Rein, 464-5; Zumpt, 1.2.327; Mommsen, *Straf* 536; H. Last, *CAH* 9.159; *OCD* 663; Pollack, 167.2; Jolowicz, 327; Lear, 13. Brecht, *Perduellio* 123 refers *perduellis* to an external, and *perduellio* to an internal enemy.

of Horatius, in the reign of Tullius Hostilius, is described as one for *perduellio*, in view of the fact that his crime was the murder of his sister (Livy, 1.26). The anomalies do not disappear with time, for it was also *perduellio* when the tribune P. Rutilius prosecuted C. Claudius Pulcher and Ti. Sempronius Gracchus in 169 B.C., for having ignored his veto and interrupted him while he was addressing a *contio*.^{9a} These cases are not easily explained. Various solutions to the problem have been proposed. Zumpt (1.2.331ff.) suggests that *perduellio* be divorced from the notion of a *perduellis* or *hostis*, and be taken as a general term for all capital prosecutions by tribunes in the *comitia centuriata*. On the other hand Pollack (181.1) believes that Horatius' crime was an injury to *maiestas*, because he killed his sister in the sight of the king and the people. The explanation of Merrill (34ff.) is that treason in the early Republic was a broad concept covering all cases of "disobedience to the mandate of the state", and including "almost any offence that appeared clearly to affect the state, and not . . . primarily an individual"; there was no technical term for this loose aggregate of crimes, but when treason later came to be known as *perduellio* the term was applied retrospectively to the crimes which had existed before the designation.

A useful approach is adopted by Brecht (*Perduellio, passim*), who believes that *perduellio* had no application to *Landesverrat*—hostility in external affairs, comprising *proditio* and serious military crimes; these were punished under magisterial *imperium*, and there was no question of a trial in the *comitia*. In the case of *Hochverrat* (hostility in internal affairs), the original *perduellio* was *affectatio regni*—any attempt to restore the monarchy. In the next stage the tribunes used *perduellio* as an instrument of *Lynchjustiz* against the patricians. After the *lex Hortensia* of 287 B.C. the tribunes, acting for the whole community, brought prosecutions for *perduellio* against incompetent and dishonest generals and magistrates. This was the great tribunician *Rechenschaftsprozess* which was conducted against *Amtsverbrechen*. In the late Republic *perduellio* degenerated into a weapon of the Popular faction against the Optimates. Elsewhere (RE 19.1.628, 635) Brecht adds that

^{9a}Livy, 44.16.8; 45.15.8. Cic. *Rep.* 6.2.

the crime was *perduellio* only when there was a capital prosecution in the *comitia centuriata*, *perduellio* never having formed the subject of a *multae inrogatio* in the *comitia tributa*.¹⁰

Brecht has given the correct historical setting to the *Rechenschaftsprozess*, which is the starting-point for the origin of the *crimen maiestatis*. A significant feature of the *Rechenschaftsprozess* is that tribunician prosecutions were not merely an exercise of jurisdiction, but constituted an actual process of law-making. Strachan-Davidson (1.105ff.) believes that the Roman Criminal Law originated in magisterial prosecutions in particular cases, which led to the gradual evolution of general principles of law. By stretching *perduellio* a magistrate could treat any wrongful act as injurious to the community, and punish the wrongdoer. It need not be assumed that the acts in question were previously laid down as culpable; on the contrary, the plebeian tribunes established liability in the case of political crimes by the very fact of bringing a prosecution. Brecht (*Perduellio* 193) amplifies this view to some extent with the statement that "Perduellio war . . . einfach das was [die Volkstribunen] dem Volk erfolgreich als *perduellio* hinzustellen wussten." Siber (*Analogie, passim*) postulates a law-making process by *Amtsrecht*, which was the extensive interpretation of an assumed *Volksrecht*. All these authorities have correctly seen that tribunician prosecutions made law, in opposition to Mommsen's rigid dogma (*Straf* 57): "Kein Delict ohne Criminalgesetz, keinen Strafprozess ohne Prozessgesetz, keine Strafe ohne Strafgesetz."

The *Rechenschaftsprozess* was directed against the following categories:¹¹ the misconduct of magistrates and pro-magistrates, especially unauthorized warfare and departure from a

¹⁰ Bleicken (360f., 368ff.), following the road taken by Brecht, believes that in the revolutionary period prior to the *lex Hortensia* the tribunes prosecuted the *Amtsverbrechen* of patrician magistrates as *perduellio*. By the middle of the fourth century B.C. these prosecutions were no longer solely in the plebeian interest, but on behalf of the entire community, and the *lex Valeria* of 300 B.C. gave legal recognition to that situation. Towards the end of the fourth century recognition was also extended to *multa* prosecutions by tribunes and aediles (cf. Lengle, *Straf* 17f.).

¹¹ Cf. Zumpt, 1.2.305-23, 338-56; Mommsen, *Staat* 2.1.320-4; Rein, 481-93; Botsford, 246-53; Siber, *Analogie, passim*; Brecht, *Perduellio* 281-302.

province, military failures, cowardice, ill-treatment of allies and enemy prisoners, disregard of the auspices, and unfair division of booty; retention of office beyond the due term; bias in the administration of justice; neglect of sacral duties; misuse of public funds; the misconduct of censors, tribunes, and inferior magistrates; and breaches of duty by legates, senators, and private individuals who undertook services on behalf of the State. These principles may be briefly illustrated by some of the cases. In 294 B.C. the Senate refused L. Postumius a triumph because he had gone from Samnium to Etruria without authority; he avoided a tribunician prosecution by staying away from Rome as a consular legate (Livy, 10.37.6-12, 46.16). In 178 B.C. the tribunes, after questioning M. Junius as to the unauthorized Histrian war, asked why A. Manlius had not come to Rome "ut rationem redderet populo Romano cur ex Gallia provincia quam sortitus esset in Histriam transisset?"¹² C. Plautius was condemned in 146 B.C. for his failure against Viriathus in Spain (Appian, *Iber.* 11.64; Diod. 33.2); Zumpt (1.2.345; cf. *RE* 21.9) says that the crime was *maiestas*, but the procedure was that of *perduellio*—a capital prosecution in the *comitia centuriata*. In 136 B.C. M. Aemilius Lepidus, in breach of an express directive from the Senate, made war on the Vaccaeii, but unsuccessfully. He was relieved of his command and consulship, and condemned on a *multae inrogatio* (Appian, *Iber.* 13.81-3). In 241 B.C. the cruelty of the

¹² To explain to the Roman People why he had gone from his allotted province of Gaul to Histria. (tr.). Livy, 41.7.7-8, 10. Professor S. Davis of the University of the Witwatersrand suggested in the course of a discussion that there might be a connection between the Athenian εἶθυνα and the Roman process *ut rationem redderet*. Greek historians seem to have identified the two procedures. Thus: ἐπὶ τοῦτω συγχνοὶ εἰσθύνθησαν (Dio, fr. 90—Greenidge and Clay, 80), ἀντεσθύνον ἀρχὴν (the censorship) (Dionys. 19.6.5), and ἀντεσθύνουσι (tribunes) (Dionys. 9.44.7). The Athenian practice required every magistrate, on giving up office, to render an account of his administration, whereupon any citizen could indict him in a private suit or a public prosecution (Glotz, 226ff.). There is, however, nothing to show that a Roman tribunician prosecution necessarily followed the vacation of office by a magistrate. It depended entirely on whether a tribune decided to prosecute. It seems clear from Cicero, *Leg.* 3.20.47 that the introduction of the calling to account which he advocates (expressly on the lines of the Greek practice) would have been an innovation in Roman Law.

Attilii to Punic prisoners of war was so shocking that they were tried, and narrowly escaped the death penalty ὡς καταισχύουσι τὴν Ῥώμην (Diod. 24.12.3). In 204 B.C. Q. Pleminius was tried for ill-treating the Locrians and plundering their temple at Rhegium (Livy, 29.16.7-21.12); the case is linked to *maiestas*, for the Locrians complained that Pleminius had kept only the garments and speech of a Roman (cf. p. 8). In 150 B.C. the praetor Ser. Sulpicius Galba executed some Lusitanians and sold others into slavery in breach of the terms of surrender. In 149 B.C. the tribune L. Scribonius proposed a plebiscite for the emancipation of the enslaved Lusitanians, and Galba seems to have been prosecuted, although the outcome is uncertain. Galba appealed *ad misericordiam*, exhibiting his two young sons to the People. Livy (*Per.* 49) says that the bill was rejected, but elsewhere he asserts (*Per. Oxy.* 49) that Galba was accused, but was acquitted on compassionate grounds. In 363 B.C. the dictator L. Manlius was prosecuted by a tribune for exercising his dictatorship for a few extra days (Cic. *Off.* 2.31.112), and for levying troops without authority (Livy, 7.3.4). In 142 B.C. the praetor L. Tubulus, presiding at a murder trial, allowed money to influence the verdict. The following year the tribune P. Scaevola introduced a plebiscite authorizing an inquiry. Misuse of public funds was the basis of the charges against M. Acilius Glabrio in 189 B.C. (Livy, 37.57.12) and C. Lucretius in 171 B.C. (Livy, 43.8).

B. "IUDICIUM MAIESTATIS APUD POPULUM"

The *Rechenschaftsprozess* was the basis of the crime of *perduellio* as it was developed by tribunician prosecutions in the third and second centuries B.C. As so constituted *perduellio* included the elements of a number of crimes which subsequently received independent statutory recognition, pursuant to a far-reaching change in the administration of criminal justice. Beginning with the *lex Calpurnia repetundarum* of 149 B.C., various crimes were regulated by laws which created *quaestiones perpetuae* or permanent jury courts—also known as *iudicia publica*,¹³ as distinct from the *iudicium populi* or popular assembly (*comitia centuriata* or *tributa*) sitting as a

¹³ See p. 24.

court. Jurisdiction in respect of the category of wrongful acts enumerated in each *lex* was conferred upon a court consisting of a body of jurors (*iudices*) under the presidency of a praetor.¹⁴

A number of *iudicia publica* dealt with crimes which had previously been prosecuted as *perduellio*. Thus, there were *leges de repetundis*, *de peculatu*, *de ambitu*, and several *leges maiestatis*. These laws dealt with *Amtsverbrechen*, and thus with acts which previously fell under the *Rechenschaftsprozess*. In other words, *perduellio* was partly fragmented into a number of distinct crimes, each with its own *quaestio perpetua*. The present concern is with the fragment which later made up certain forms of the *crimen maiestatis*, under the *leges maiestatis*. There is reason to believe that this fragment existed before 103 B.C., not merely as an area of *perduellio* which was potentially *maiestas*, but specifically as the *crimen maiestatis*. Indeed several authorities entertain this possibility, although without detailed analysis. Siber (*Analogie* 41) says that the *maiestas* laws of Saturninus and Sulla "fanden schon eine ausgedehnte Praxis vor, die sich ohne Gesetze und deren Analogie entwickelt hatte, also nur auf tribunizischen Amtsrecht beruhen konnte." Kübler (546), although doubting whether tribunician prosecutions were specifically for *maiestas*, admits that "es kann kaum bezweifelt werden, dass der Begriff und seine Bezeichnung längst im Volke eingewurzelt war, als

¹³ Henderson, 82, believes that *quaestio* and *iudicium publicum* were not interchangeable terms, but meant a process of inquiry and a single trial or judgment, respectively. She rather unfairly foists this notion on Mommsen, who would no doubt have defended himself adequately by citing Macer, *Dig.* 48.1.1.

¹⁴ Mommsen, *Straf* 190, 708; Strachan-Davidson, 2.4ff., 20ff.; Lengle, *Straf* 26. Modern research, reviving a theory put forward a century ago by Zumpt (2.1.51-4, 70-92, 131-2, 136, 184-5), seeks to re-interpret the introduction, probably by the *lex Acilia repetundarum* of 123 or 122 B.C. (Hitzig, 3-4; Badian, *Gracchi* 208), of the class of *iudices Gracchani*. Henderson believes that the *quaestio repetundarum* was originally a comprehensive criminal court for the trial of senators for various crimes, and that separate *quaestiones* for particular crimes were first created by Sulla. For an effective criticism of her hypothesis see Sherwin-White, *Extortion* 51-3. Badian (*Gracchi* 209) argues well for the theory that the *iudices Gracchani* were used for other *iudicia publica* as these came to be established on the model of the extortion court.

gesetzliche Regelung des Verbrechens und das Strafverfahrens darüber erfolgte".

Pollack (154, 161, 166-77), although he bases himself on certain outmoded notions, has made an analysis which seems to open a worthwhile line of approach to the problem. His theory is that it is unrealistic to seek at any stage for a distinction between the facts which constituted *perduellio* and those which made up the *crimen maiestatis*. In the field of substantive law there was no differentiation of the wrongful acts which were prosecuted as *perduellio* from those which formed the subject of a charge of *maiestas*. Both were simply the

Ausdruck für eine Summe von Handlungen, die, weil sie gegen die Majestät der Gemeinde gerichtet sind, bestraft werden. . . . Der strafrechtlichen Idee nach sind 'perduellio' und 'crimen maiestatis' identische Dinge. In beiden Begriffen spiegelt sich die Majestätsidee wieder, sie fließen unterschiedslos ineinander. (169)

The difference between the two concepts was purely procedural. The crime was *perduellio* when it was prosecuted by *duoviri perduellionis*, with a capital sanction, and *maiestas* when it was dealt with under "des Quästionenverfahren", with a non-capital sanction (175-6).

In the first place it is objected that Pollack's identification of the substantive areas of *perduellio* and *maiestas* is too widely stated. It is preferable to regard *maiestas* as only one of the component fragments of *perduellio*, taking the latter in the general sense of all those *Amtsverbrechen* which formed the subject of the *Rechenschaftsprozess*, and in this regard Kübler's "zwei sich schneidende Kreise" (above) is apt. For example, of the categories constituting the *Rechenschaftsprozess*, that which consisted in the misuse of public funds seems to have been associated so early with the crime of *peculatus* (for which see Siber, *Analogie* 19-20) that it should not be regarded as ever having formed part of the *maiestas* fragment of *perduellio*. And the category which included unauthorized warfare and departure from a province was ambivalent, in that it gave rise in the last century B.C. to *iudicia publica* for both *maiestas* and the *crimen repetundarum*

(pp. 85-7). Secondly, Pollack's reliance on the *duoviri perduellionis* for cases of *perduellio* is scarcely warranted. The archaic duumviral procedure traditionally originated at the trial of Horatius, a case which no doubt reflects a very old procedure,¹⁵ but the process is not authentically attested later than the case of M. Manlius in 384 B.C.,^{15a} except perhaps for its artificial revival by the Popular faction in 63 B.C., for the trial of C. Rabirius (pp. 32-33). It can safely be assumed that this procedure became obsolete with the passing of the *lex Hortensia* in 287 B.C., and the consequent vesting of exclusive jurisdiction over *perduellio* in the *tribuni plebis*.¹⁶ Thirdly, by identifying the *crimen maiestatis* exclusively with "das Quästionenverfahren" Pollack in fact denies the contemporary existence of *perduellio* and *maiestas*, for the first permanent *quaestio maiestatis* was set up in 103 B.C. (pp. 44-50). It would follow on Pollack's theory that the *crimen maiestatis* was not known *eo nomine* until that year, which brings the problem back to the position taken by H. Last (p. 16). It would also follow that until 103 B.C. "Handlungen . . . gegen die Majestät der Gemeinde" were exclusively *perduellio*. But Pollack's contention that the distinction between the two crimes was purely procedural does, it is believed, give a valuable indication of the right approach. It is suggested that attention should be directed to certain cases in the third and second centuries B.C., where the same accused was tried on the same facts by the *comitia centuriata* and the *comitia tributa* in turn. The facts of these cases fall squarely under the tribunician *Rechenschaftsprozess*, and when they were prosecuted in the *comitia centuriata* the crime was *perduellio*, in the sense in which Brecht understands it (p. 20). What was the crime when the same accused was brought before the *comitia tributa*¹⁷ on the same facts?¹⁸

¹⁵ For the trial of Horatius see Livy, 1.26. Brecht, *Komitalverfahren* 293 (cf. *Perduellio* 126-32) is inclined to accept the historical value of the trial, but it is described as a "Rechtslegende" by Mommsen (*Straf* 155.1), and as "ganz sagenhaft" by Siber, *Verfassung* 96.

^{15a} Brecht, *Perduellio* 191.4; Siber, *Verfassung* 112.

¹⁶ Brecht, *Perduellio* 191.4; Siber, *Verfassung* 127; Botsford, 243ff.

¹⁷ Also known as the *concilium plebis*. On the identification of the two assemblies (against Mommsen, *Staat* 3.149.3, 322ff.) see Botsford, 119-38; Roos, *passim*.

In 249 B.C. P. Claudius Pulcher, when told that the sacred chickens had refused to eat during the taking of the auspices, contemptuously threw them into the sea, "quasi ut biberent quando esse nollent".¹⁹ Claudius went on to suffer a disastrous defeat at the naval battle of Drepana. He was prosecuted by the tribunes in the *comitia centuriata*, expressly for *perduellio*: "dies ei dicta perduellionis a Pullio et Fundanio tr. pl."^{19a} A storm interrupted the trial, thus annulling the proceedings in accordance with the rule that the assembly had to give judgment without an adjournment: "cum comitia eius rei fierent et centuriae intro ducerentur, tempestas turbida coorta est; vitium intercessit"; an attempt to renew the charge of *perduellio* was vetoed by the tribunes: "postea tr. pl. interceserunt, ne iidem homines in eodem magistratu perduellionis bis eundem accusarent".²⁰ Claudius was then prosecuted by the same tribunes in the *comitia tributa*, and was condemned and sentenced to a fine of 120,000 asses: "itaque actione mutata iisdem accusantibus multa inrogata populus eum damnavit aeris gravis CXX milibus".^{20a} The fine was calculated on the

¹⁸ There is, of course, no suggestion that the *Rechenschaftsprozess* did not occur earlier than the third century B.C. The tradition attests *Amtsverbrechen* as early as 491 B.C. (Brecht, *Perduellio* 282-3) and thereafter a long line of cases in the fifth and fourth centuries B.C. See Zumpt 1.2.305-10; Brecht, *Perduellio* 281-7. The principles enunciated in these cases are substantially the same as in the cases which have been selected from the third and second centuries B.C. to illustrate the *Rechenschaftsprozess* (pp. 21-3), and there is no doubt that a certain area of that process contained the elements of the *crimen maiestatis* prior to the third century B.C., no less than during the third and second centuries. The latter period is, however, selected as the starting-point of the *crimen maiestatis* for two reasons. Firstly, prior to the *lex Hortensia* of 287 B.C. the *Rechenschaftsprozess* did not form part of the public criminal law of the Roman State. Secondly, it will be suggested that the first pursuit of the *crimen maiestatis* proper occurred in 249 B.C., so that to discuss cases prior to the third century might further illustrate the general principles inherent in the crime of *maiestas*, but would not take the matter much further as far as the first appearance of the crime *eo nomine* is concerned.

¹⁹ Saying that they had better drink, since they refused to eat. (tr.) Suet. *Tib.* 2. Cf. Livy, *Per.* 19; Val. Max. 1.4.3; *Schol. Bob.* 27.

^{19a} *Schol. Bob.* 27. Cf. Polyb. 1.52; Val. Max. 8.1.4; Suet. *Tib.* 2.

²⁰ The tribunes vetoed a second charge of *perduellio* against the same accused by the same accusers in the same magistracy. (tr.) *Schol. Bob.* 27. Cf. Cic., *Dom.* 17.45; Val. Max. 8.1.4.

^{20a} *Schol. Bob.* 27; cf. Polyb. 1.52.

basis of 1,000 asses for each ship lost (Cic. *Nat. Deor.* 2.3.7).

The second charge against Claudius, in the *comitia tributa*, is not given a name in the sources, but it may be possible to supply one from the trial of his sister, Claudia. In 246 B.C., when leaving the theatre, she was jostled in a crowd,²¹ and ill-temperedly regretted that her brother was not present to reduce the rabble, as he had done at Drepana: "Sed utinam, inquit, reviviscat frater aliamque classem in Siciliam ducat atque istam multitudinem perditum eat, quae me nunc male miseram convexavit"²² (Gell. 10.6.2); "optaverat ut frater suus Pulcher revivisceret atque iterum classem amitteret, quo minor turba Romae foret"²³ (Suet. *Tib.* 2). As a result of this Claudia was prosecuted by the plebeian aediles, Fundanius and Ti. Sempronius, on a *multae inrogatio* in the *comitia tributa*, and her sentence was a fine of 25,000 asses (Gell. 10.6.3). Her crime was specifically the *crimen maiestatis*: "quo novo more iudicium maiestatis apud populum mulier subiit"²⁴ (Suet. *Tib.* 2). Gellius (10.6.3) does not name the crime.

Suetonius' reference to a *iudicium maiestatis* should not be dismissed as an anachronism. He says that the trial took place *apud populum*, which here means the *comitia tributa* on a *multae inrogatio*, and there is no reason to suppose that he is confusing the court with the *iudicium publicum* (*quaestio perpetua*) which sometimes still dealt with *maiestas* in his day. And *novo more* suggests that his source was specifically mindful of the law in the third century B.C., for the *crimen maiestatis* and the *quaestio maiestatis* were no novelty in Suetonius' day. His source may have been Ateius Capito, a prominent jurist under Augustus, and the founder of a law-school (Schulz, *Legal Science* 119). In this regard the remark of Gellius (10.6.4) is significant: "Id factum esse dicit Capito Ateius in commentariis de Iudiciis Publicis."²⁵

²¹ So Gellius, 10.6; Val. Max. 8.1. damn. 4; and Livy, *Per.* 19. Suetonius *Tib.* 2 says that her carriage was obstructed in a crowded street.

²² Would that my brother were alive to take another fleet to Sicily and destroy this vexatious throng! (tr.)

²³ She wished that her brother were alive to lose another fleet and reduce the Roman mob. (tr.)

²⁴ The woman was tried for *maiestas* by the People, after the new fashion. (tr.)

The historical background ^{25a} favours Suetonius. Drepana, as the only serious naval defeat suffered by Rome in the First Punic War, was a direct threat to her entire position. It was followed by the loss by L. Junius Pullus of a convoy to the Punic fleet under Carthalo, and Rome was left without a navy. Bankruptcy threatened, and a call for new crews might drive the allies to revolt. The policy was merely to hold on. In 246 B.C., the very year of Claudia's ill-timed remark, Hamilcar struck at the rear of the Roman armies besieging Drepana and Lilybaeum, established himself on Mount Heirkte and anchored a fleet at its foot, a position from which he was to hold the Romans at bay for three years. In the tense atmosphere of the time Claudia's words may well have been interpreted as a diminution of Roman *maiestas*.

Claudia was prosecuted in the same court as her brother. The same person was one of the accusers in both cases, namely C. Fundanius, as tribune against Claudius and aedile against Claudia (cf. Broughton, 1.215 ff.). Her case was almost contemporaneous with his. Her offence was a remark alluding to the occasion of his misfortune. A fine of comparable magnitude was imposed on her. Her crime was *maiestas* while the charge against him was not *perduellio*. There is a reasonable possibility that the second prosecution of P. Claudius Pulcher was for the *crimen maiestatis*, expressly so described. His case, then, may be noted as the earliest known instance where the *Rechen-schaftsprozess* was pursued in the form of the *crimen maiestatis*. ²⁶

The converse case is that of the army contractor M. Postumius Pyrgensis, who in 212 B.C. claimed compensation for losses sustained by shipwreck; in fact he had fraudulently sunk old ships. The tribunes L. and Sp. Carvilius prosecuted him, proposing a fine of 200,000 asses. Livy does not name the

²⁵ This is attested by Capito Ateius in his Commentary on the Public Courts. (tr.)

^{25a} T. Frank, *CAH* 7.687-9; Scullard, 168-70.

²⁶ Gundel 291-2 (cf. Sherwin-White, *Citizenship* 160) argues that the *maiestas* treaty with Gades in 78 B.C. was a renewal of an earlier treaty of 206 B.C. which also contained the *maiestas* clause. This date is close enough to 249 B.C. to support the supposition that the second half of the third century B.C. may have witnessed the more or less simultaneous introduction of *maiestas* as a technical concept in the external and internal fields.

crime, but it may have been *maiestas*.^{26a} The offence fell under *Amtsverbrechen*, as Postumius had undertaken a duty on behalf of the State (cf. p. 22). Postumius' publican friends stormed the Assembly, the tribunes terminated the trial in order to avoid bloodshed, and brought a second prosecution, this time for *perduellio*: "Carvili tribuni plebis ommissa multae certatione rei capitalis diem Postumio dixerunt"²⁷ (Livy, 25.4 8).

In 211 B.C. a *multae inrogatio* was proposed against the ex-praetor Cn. Fulvius Flaccus, arising out of his defeat by Hannibal at Herdonea. At the third *contio* it appeared that there had not only been a rout, but that the cowardly flight of Fulvius had precipitated it. This so incensed the meeting that there was a demand for a capital trial. This demand raised the question whether, after two *contiones* on a *multae inrogatio*, the third could be capital. The tribunes refused to intercede, and Fulvius was charged with *perduellio*.^{27a} This case is perhaps a better example of a change of forum on the same facts than that of Postumius. The violent intervention of the latter's friends may have constituted a further crime, and therefore the *perduellio* charge was pressed after the Senate had decreed that the use of violence against the State was a pernicious example (Livy, 25.4). In the case of Fulvius the charge was amended on the same facts, amplified by the aggravating circumstance of cowardice.

Cicero supplies a slightly different example (*Verr.* 2.1.4.10 ff.). He says that if he does not get a conviction against Verres for extortion, he will charge him with *peculatus*. If that fails, he will prosecute him in the *quaestio maiestatis*. If the *quaestio* acquits, he will pursue him in the *comitia tributa*.²⁸ It is significant that the immediate alternative to the *quaestio*

^{26a} Livy, 25.3.8-5.1. Cf. Siber, *Analogie* 60; Mommsen, *Straf* 767.5.

²⁷ The Carvili dropped the proposal for a fine and brought a capital charge against Postumius. (tr.)

^{27a} Livy, 26.3.5, 8; Val. Max. 2.8.3.

²⁸ Cicero, as a plebeian aedile (Broughton, 1.220.3; 2.132, 136.5), had jurisdiction in the *comitia tributa*. The view of Strachan-Davidson (1.108) that he was a curule aedile fails to take into account the lack of any precedent for a political prosecution by a curule magistrate.

maiestatis is the *comitia tributa*, which suggests that the charge in the latter forum would also have been for *maiestas*.

In three cases the existence of the *crimen maiestatis* in this period is attested *eo nomine*, and not merely as a matter of inference. The first is that of Claudia (pp. 28-9). The second concerns C. Flaminius, tribune in 232 B.C. who, while addressing the *concilium plebis* on an agrarian law which the Senate opposed, was forcibly removed by his father. Cicero (*Invent.* 2.17.52) says that the father was charged with *maiestas*: *arcessitur maiestatis*. Before dismissing Cicero's testimony as a mere rhetorical exercise,²⁹ it would be necessary to dispose of the argument that Cicero is the best and most extensive source for Republican *maiestas*, and deals with it in a juristic manner. In the instant passage he sets out the contentions of the prosecution and the defence, and concludes with the issue: "Iudicatio est: minueritne is maiestatem qui in tribuniciam potestatem patria potestate utatur."³⁰ That Cicero does not confuse *perduellio* and *maiestas* is shown by his specific use of the word '*perduellio*' when he means *perduellio* and not *maiestas*, namely when he mentions the introduction by C. Caelius Caldus in 106 B.C. of a law providing for secret voting in *perduellio* trials (*Leg.* 3.16.36). The third case is that of the proconsul L. Quinctius Flamininus, who in 193 B.C. beheaded a Gallic prisoner for the entertainment of his mistress. Seneca Rhetor attests a specific charge of *maiestas*, and some scholars agree with him.^{30a} But according to another tradition his punishment was exclusion from the Senate by the censor M. Porcius Cato, "quod amplissimi honoris maiestatem tam taetro facinore inquinaverat" (*Val. Max.* 2.9.3). The essence of the difficulty is noticed by Gonin (13), who says: "Die eenaardige is dat hierdie geval nie voor die regsprekende instansies gedien het nie." (The curious part is that this case was not dealt with by way of judicial process.) If the case is to be accepted as one of *maiestas* it must be on the basis that it is evidence of a practice which was subsequently recognized by statute. In 104 B.C. a law proposed by L. Cassius Longinus provided that

²⁹ The historicity of the case is accepted by Bonner, 27 and Santa Cruz, 92-3.

³⁰ The issue is whether the exertion of paternal power against tribunician power diminished *maiestas*. (tr.)

^{30a} *Controv.* 9.25pr. Cf. Kübler, 546; Bonner, 108; Drexler, 203.

those who were condemned by the People or deprived of their *imperium* were to be excluded from the Senate (Ascon. 78C; Cic. *Dom.* 31.83). If there was a similar *de facto* procedure in Flamininus' time, his exclusion from the Senate may have been preceded by his condemnation in the *comitia tributa*, on a charge of *maiestas*.

The trial of C. Rabirius in 63 B.C., for his part in the murder of L. Appuleius Saturninus in 100 B.C., is of some relevance to the questions discussed above, for it may be another example of a prosecution for both *perduellio* and *maiestas* on the same facts. The case, whose difficulties are not resolved by the survival of a speech by Cicero (*Pro Rabirio Perduellionis Reo*), seems to have started before Caesar and L. Caesar, sitting as *duoviri perduellionis*.³¹ Caesar condemned Rabirius, who exercised his right of *provocatio ad populum*, but the trial in the *comitia centuriata* was vitiated when the praetor Metellus Celer struck the red flag on the Janiculum, thus dissolving the Assembly (Dio, 37.27-8). The tribune T. Labienus, who played some part in the proceedings before the *duoviri*,³² then brought a further prosecution in one of the popular assemblies. Despite Dio 37.28.4, it should be inferred that there was a second trial, in view of Cicero's assertion (*Rab. Perd.* 6.18; cf. 6.19) that if he were undertaking the defence *ab initio* he would admit that Rabirius killed Saturninus, but that he is precluded from doing so because the falsity of the allegation has already been demonstrated by Q. Hortensius, who previously appeared for the accused.³³ The question is whether the second trial, which seems to be the one at which Cicero spoke, was based on a charge of *perduellio* or *maiestas*.^{33a} The second trial included a number of minor charges (Cic. *Rab. Perd.* 2.7-8), but the death of Saturninus was brought up again, although in a slightly different form. In the first (duumviral)

³¹ As to whether they were appointed by the praetor or a *lex*, and whether there was an immediate judgment or an *anquisitio* in three *contiones*, see Brecht, *Perduellio* 179-82, 186-9 and Siber, *Provocatio* 382, *Verfassung* 112. Perhaps the most intelligent attempt to resolve the difficulties of this case is made by Strachan-Davidson, 1.188-203.

³² On which see Strachan-Davidson, 190-1; Brecht, *RE* 19.1. 635-6; Siber, *Provocatio* 382; Lengle, *Straf* 21.

³³ Is this a sly thrust by Cicero at his great forensic rival?

^{33a} *Perduellio*: Brecht, *Perduellio* 178.3; *Maiestas*: Pollack, 176.3.

trial the allegation was: "C. Rabiri manu L. Saturninum esse occisum"³⁴ (*Rab. Perd.* 6.18). But in the second trial it was: "interficiendi Saturnini causa C. Rabirium arma cepisse",³⁵ and Cicero was not precluded from admitting this allegation (*Rab. Perd.* 6.18). It has been suggested (Pollack, 176.3) that the second trial must have been for *maiestas*, because of "ius omne retinendae maiestatis Rabirii causa continebatur"³⁶ (*Cic. Or.* 29.102). But Cicero probably means something quite different. His point is that to prosecute Rabirius is to deny the validity of the *senatusconsultum ultimum* which advised the murder of Saturninus, a point which he makes even more forcefully when he says that the decree authorized the consuls to see to it "ut imperium populi maiestasque conservaretur"³⁷ (*Rab. Perd.* 7.20; cf. 1.2). There is the further difficulty that the charge does not seem to have been based on the fact that the murder of Saturninus was an attack on a magistrate; it was rather a straight allegation of murder (Mommson, *Straf* 358.1; 632.4; Brecht, *Perduellio* 170-1, 173.1, 177). The minor charges (*Rab. Perd.* 2.7-8) could well have been pressed on a *multae inrogatio* rather than a capital charge, and it seems that they were brought in the same (second) trial as the charge of having taken arms in order to kill Saturninus (*Rab. Perd.* 3.9, 6.18). Furthermore, a second trial for *perduellio* would have breached the rule laid down in the case of P. Claudius Pulcher (p. 27). On balance the evidence seems to favour the view that the second trial was for *maiestas*, and if so it lends support to the theory which has been propounded, namely that when the *maiestas* fragment of *perduellio* was prosecuted in the *comitia tributa* on a *multae inrogatio*, the crime was expressly the *crimen maiestatis*.³⁸

³⁴ That the hand of C. Rabirius had killed L. Saturninus. (tr.)

³⁵ That C. Rabirius had taken arms for the purpose of killing Saturninus. (tr.)

³⁶ The case of Rabirius covered the whole question of the preservation of *maiestas*. (tr.)

³⁷ That the empire and *maiestas* of the People were preserved. (tr.)

³⁸ Mommsen's theory as to the origin of the *crimen maiestatis* can more conveniently be considered when the question of tribunician sacrosanctity as an element in the *crimen maiestatis* under Augustus is discussed. See pp. 220-22.

The Lex Maiestatis: Saturninus

A. INTRODUCTION

IN A CERTAIN SENSE it can be said that in the same way as the principles which were subsequently enshrined in the *crimen maiestatis* go back to the fifth century B.C. (p. 27 n.18), so legislation in respect of acts directed against the *maiestas* of the Roman People has its roots in laws which were introduced, or are attested as having been introduced, long before the crime specifically known as the *crimen maiestatis* was recognized by the public criminal law. In this sense *maiestas* legislation may be supposed to have begun¹ with the putative *lex Icilia* of 492 B.C., which forbade the interruption of a tribune who was addressing the *concilium plebis*,² a principle which was applied in historical times in cases such as that of C. Flaminius (p. 31). A fair case has been made out (Brecht, *Perduellio* 142-50) for a primitive *lex perduellionis* which is equated to the *lex horrendi carminis* to which Livy (1.26) refers in his account of the trial of Horatius. It has been suggested (Pollack, 168, 169 and n.2) that the concepts underlying *perduellio* and *maiestas* were dealt with in the XII Tables, although not *eo nomine*, a view which is supported by the reference of Marcian (*Dig.* 48.4.3). It has also been suggested

¹ The so-called "law of Romulus", which is supposed to have subjected breaches of the patron-client relationship to the law of *proditio* (Dionys. 2.10.3) cannot be seriously considered as anything more than the propaganda of a political pamphleteer under Caesar or Augustus: Premerstein, 8-12; cf. Brecht, *Perduellio* 34-41; Gundel, 297.4.

² Siber, *Analogie* 29, *Verfassung* 41, 82; Niccolini, 44-50. On *leges sacrae* see also pp. 213-4.

(Lear, 19) that the *Senatusconsultum de Bacchanalibus* of 186 B.C., which advised the consuls to conduct an investigation into the cult of the Bacchanals, was concerned with the *crimen maiestatis*; but the Senate had no legislative power in that period,^{2a} and in any event the decree was merely the grant of special emergency powers to the consuls (Gaudemet, 336).

It is proposed, however, to limit the discussion to those laws which submitted the *crimen maiestatis* to a *iudicium publicum* or *quaestio*. These laws, which are grouped as *leges maiestatis*, successively detached various *maiestas* areas from the *Rechenschaftsprozess*, stated each area so detached in the form of a category of wrongful acts, and submitted the category thus ascertained to the jurisdiction of a *quaestio*. The result was that although the *comitia tributa* did not lose its jurisdiction entirely, its role was increasingly circumscribed as the area of jurisdiction of the *quaestio maiestatis* was extended.

Porcius Latro (19) attests a *lex Gabinia* whereby those who instigated clandestine meetings were to be punished *more maiorum*; he assigns the original rule to the XII Tables. A certain Gabinus was tribune in 139 B.C., and those who accept this law date it to his tribunate.³ Zumpt^{3a} concedes the possibility of a law prohibiting nocturnal gatherings, but says that it was not a *maiestas* law because Porcius Latro does not refer to *maiestas populi Romani*. The law is doubted by Mommsen (*Straf* 563 n.3) and Rotondi (297), and flatly rejected by Gundel (297.4). Even if there was a *lex Gabinia* it was not a *maiestas* law, for punishment *more maiorum* meant a capital sentence (Kübler, 546), which excludes *maiestas* at the supposed time of the *lex Gabinia*. Cicero nowhere refers to this law in his many expositions of *maiestas*. He mentions the tribune of 139 B.C. as the author of a law introducing secret voting in the Assembly (*Leg.* 3.16.35), and describes him as "homine ignoto et sordido". Livy (*Per. Oxy.* 54) refers to

^{2a}Krüger, 24-6; Daube, 78-9.

³ See the authorities cited by Zumpt (2.1.428 n.124) and Kübler (546). Broughton (1.483.2) accepts the law, but is inclined to assign it to a later Gabinus.

^{3a}1.1.383; 2.1.428 n.124.

him as "vernae nepos". Both Cicero and Livy knew enough about him to stress his humble origin, and both knew of his ballot law, but neither credits him with a *maiestas* law. It may conceivably be argued that a law dealing with voting in the Assembly may have dealt with the related question of the *contiones* at which proposals which were to be put to the vote were discussed, but even then the capital sanction is against a *maiestas* law.

In 110 B.C.⁴ the tribune C. Mamilius Limetanus carried a law setting up an extraordinary or *ad hoc* commission which, although not a *quaestio perpetua*, was modelled on such a court; the court was composed of *Gracchani iudices* (Badian, *Gracchi* 208). Its terms of reference were to try those who had incited Jugurtha to ignore the decrees of the Senate, those who had accepted bribes from him, those who had delivered elephants or deserters to him, and those who had negotiated with him concerning war and peace.⁵ The establishment of the *quaestio Mamiliana* was prompted by the ignominious peace imposed on A. Postumius Albinus, legate of the consul Sp. Postumius Albinus, during the latter's absence in Rome. The Populares clearly wanted to press home the attack on corruption in the administration with all speed, for three quaesitors were appointed to preside over three separate courts.⁶ M. Scaurus, "the guiltiest of the guilty" (Mommsen, *History* 3.397), surprisingly appeared not as an accused but as a quaesitor (Sall. *Jug.* 40.4). The commission is criticized not only by Cicero, but also by Sallust,^{6a} but Cicero may have had a motive. The condemned included L. Opimius, who had been the first to employ the *senatusconsultum ultimum* when, in 121 B.C., he procured the judicial murder of C. Gracchus and

⁴ So Mommsen, *Straf* 197; Greenidge, *History* 375, *Procedure* 381; Greenidge and Clay, 68; Strachan-Davidson, 1.239; Rice Holmes, *Republic* 1.36; Lengle, *Straf* 30; Levy, 27.3. Heitland, 2.347 and Broughton, 1.546 prefer 109 B.C.

⁵ Sall. *Jug.* 40.1; Cic. *Brut.* 34.128. Cf. Greenidge, *History* 375, 377; *Procedure* 381.

⁶ Sall. *Jug.* 40.4; Cf. Greenidge, *History* 295, 375, 378; Broughton, 1.520, 533, 540, 543-4. For some of those who were condemned see Greenidge, loc. cit. and Broughton, loc. cit.

^{6a} Cic. *Brut.* 127-8; *Planc.* 70; *Sest.* 140. Sall. *Jug.* 40.3, 5.

his supporters.⁷ Cicero, who in 63 B.C. executed some of those involved in the conspiracy of Catiline on the strength of such a decree, depended for the justification of his action on the theory which he invented, namely that a citizen who was guilty of *perduellio* forfeited his rights of citizenship retrospectively to the time when his crime was committed, and could therefore be summarily dealt with without trial.⁸ The condemnation of Opimius by the Mamilian commission was an adverse finding against the man on whose credit Cicero relied so heavily for his own exoneration, and this perhaps explains the vehemence of his attack on the commission. The terms of reference of the commission (Sall. *Jug.* 40.1) do not use the words *perduellio* or *maiestas*, but in this respect Sallust's attestation of the *lex Mamilia* is on all fours with the language used to record the provisions of the *lex Varia*, which is known to have been a *lex maiestatis* (pp. 59, 68). Indeed there is a close resemblance between the general format of the Mamilian law and that of the Varian, both of which dealt with external relations. It is only because of a casual reference that the *lex Varia* is known to have been a *maiestas* law, for the word *maiestas* does not appear in the transmitted citation of its provisions (p. 59), and it may be felt that the same can be said of the *lex Mamilia*. It has been suggested (Lengle, *Straf* 28) that the provisions of the *lex Mamilia* were re-enacted in the *lex Appuleia maiestatis* of Saturninus, but the evidence for the latter suggests that it was confined to internal affairs (pp. 54-5). There is no doubt that the categories enunciated in the *lex Mamilia* fell under the concepts both of *Amstverbrechen* and *proditio*, and the significance of the *lex* is that it is the first attempt to subtract part of the *maiestas* area from the jurisdiction of the tribunes prosecuting in the *comitia tributa*, and to submit the category so subtracted to a court consisting of *iudices Gracchani*. It is perhaps only the temporary

⁷ Greenidge, *History* 258; Heitland, 2.318-20; Merrill, 42-3; Siber, *Analogie* 11.

⁸ Cic. *Cat.* 1.28.4, 10. The theory deceived Mommsen (*Straf* 256 and n.4, 257), and Siber (*Analogie* 12-13), but has been exploded by Merrill (44-52) and Brecht (*Perduellio* 205-9), on the simple basis that a retrospective loss of citizenship could not be ascertained until the guilt of the accused had been established by due trial.

constitution of the commission which precludes the acceptance of the *lex Mamilia* as the first *lex maiestatis*.

The experiment essayed by the Mamilian law does not seem, however, to have been immediately repeated, for in two instances in the same period the older procedure *apud populum* was followed. In 109 B.C. the consul M. Iunius Silanus suffered a serious defeat at the hands of the Cimbri.⁹ In 104 B.C. the tribune Cn. Domitius Ahenobarbus unsuccessfully accused him in the *comitia tributa* of military failure and of having begun the Cimbrian war *iniussu populi* (Ascon. 80C). Asconius (80C), in his account of this case, uses the words "ipse quoque adversus Cimbrios rem male gesserat",¹⁰ which is reminiscent of Tacitus' "si quis male gesta re publica maiestatem populi Romani minuisset"¹¹ (*Ann.* 1.72.3). Although the expression *maiestatem minuere*, as a *statutory* term, was first introduced into the public criminal law by Saturninus (pp. 50-55), it is not impossible that the indictment of Iunius *apud populum* used similar language. In 107 B.C. the consul L. Cassius Longinus was defeated and slain by the Tigurini. His legate C. Popilius Laenas, who saved the remnant of the army by surrendering half the baggage and giving hostages, was prosecuted and went into exile.¹² The statement that Popilius *arcessitur maiestatis* (Auct. *Herenn.* 1.15.25) is accepted by Broughton (1.551-2) at face value. H. Last (*CAH* 9.159) says that he was prosecuted under Saturninus' *maiestas* law, but this is chronologically impossible, for the *lex Appuleia* was not introduced until 103 B.C. (pp. 48-9). It seems clear that the prosecution was *apud populum*,^{12a} and this may be another example of a specific charge of *maiestas* in the *comitia tributa*.

B. "EX QUO VERBO TOTA ILLA CAUSA PENDEBAT"

Q. Servilius Caepio was uncommonly skilled at enraging the Popular faction. As consul in 106 B.C. he carried a *lex*

⁹ Livy, *Per.* 65; Ascon. 68C; Florus, 1.38.4; Velleius, 2.12.2.

¹⁰ Furthermore, he had mismanaged matters against the Cimbri. (tr.)

¹¹ If anyone diminished the *maiestas* of the Roman People by mismanaging public affairs. (tr.)

¹² Livy, *Per.* 65; Caes. *BG.* 1.7.4; Orosius, 5.15.23-4; Cic. *Rep.* 1.3.6; Auct. *Herenn.* 1.15.25 4.24.34.

iudiciaria abolishing the exclusive control of the *iudicia publica* which the equestrian order had exercised since the time of C. Gracchus.¹³ As commander in Gaul against the Volcae Tectosages he seized the sacred treasure from the temple at Tolosa. The treasure disappeared on its way to Rome, and it was thought that Caepio had a hand in the theft.¹⁴ In 105 B.C. three armies were sent against the Cimbri, including one under the consul Cn. Mallius Maximus, and another under Caepio as proconsul. Caepio rejected Mallius' request that they combine their forces in order to resist the Gauls more effectively, and the result was the disastrous Roman defeat at Arausio, the worst since Cannae; both Mallius and Caepio, however, managed to escape.¹⁵ There was a strong popular reaction against Caepio, and¹⁶ it seems to have been well justified. On his return to Rome his *imperium* was abrogated, and in 104 B.C.¹⁷ the tribune L. Cassius Longinus carried a law whereby anyone who suffered condemnation by the People, or had his *imperium* abrogated, forfeited his seat in the Senate (Ascon. 78C; Livy, *Per.* 67). The law may have been of general application, but was directly aimed at Caepio (Ascon. 78C).

Caepio's son, Q. Servilius Caepio (jun.), was faithful to the family tradition. When Saturninus proposed a *lex frumentaria* during one of his tribunates, Caepio (jun.), who was

^{12a} Cic. *Leg.* 3.36. Cf. Rotondi, 324; Broughton, 1.551.

¹³ The nature of Caepio's reform is not clear. It seems that he restored senators to the juries in extortion trials, either jointly with the *equites* or exclusively. It is possible that his law was repealed by a *lex Servilia* introduced by Saturninus' associate, Glaucia, in 104 or 101 B.C., whereby control was restored to the *equites* ("*iudices Gracchani*"). See Hardy, *Lex Iudiciaria* 99-104; Strachan-Davidson, 2.80-2; Münzer, *RE* 2A.2.1784; Lenglé, *Straf* 19; H. Last, *CAH* 9.162-3; Balsdon, *Extortion*, *passim*; Broughton 1.553. The most recent research is summarized and criticized by Schönbauer (99-104), and an intelligent resolution of the difficulties is proposed by Badian (*Gracchi* 208-9).

¹⁴ Heitland, 2.365; Lenglé, *Arausio* 302; Münzer, *RE* 2A.2.1784; H. Last, *CAH* 9.159.

¹⁵ Heitland, 2.365-6; Lenglé, *Arausio* 302; Münzer, *RE* 2A.2.1784-5; H. Last, *CAH* 9.159; Broughton, 1.555.

¹⁶ Despite Sherwin-White's view (*Violence* 3) that the tribunes were "very rough with him".

¹⁷ 105 B.C. according to Rotondi, 325.

then urban quaestor, objected to the burden of the proposed law falling on the *aerarium*, and procured a decree of the Senate: "si eam legem ad populum ferat, adversus rem publicam videri eum facere"¹⁸ (Auct. *Herenn.* 1.12.21). Despite the intercession of his colleagues Saturninus put the proposal to the vote, whereupon Caepio (jun.) resorted to violence: "cum viris bonis impetum facit, pontes disturbat, cistas deicit, impedimento est quo setius feratur"¹⁹ (Auct. *Herenn.* 1.12.21).

The starting-point for the date and content of the *lex Appuleia maiestatis* of Saturninus is a series of prosecutions, all of which directly or indirectly concern the Servilii Caepiones. As these trials raise serious chronological and factual problems, it will be convenient to set them out briefly before discussing the difficulties. The first step was the setting up of a *quaestio auri Tolosani* to investigate the seizure by Caepio (sen.) of the Tolosan treasure and (more pertinently) its failure to reach Rome.²⁰ There were also prosecutions of Caepio (sen.) and Mallius in respect of the disaster of Arausio. Caepio (sen.) is said to have been prosecuted by the tribunes (Auct. *Herenn.* 1.14.24) and to have been condemned and sentenced to confiscation of his property and abrogation of his *imperium* (Livy, *Per.* 67). There is a tradition that he was imprisoned, but was released by the tribune L. Reginus and went into exile at Smyrna; according to another version he died in prison.^{20a} The tribune C. Norbanus played a leading part in the trial, which was conducted in circumstances of some violence. A stone struck M. Aemilius Scaurus, the *princeps senatus*, and the tribunes L. Cotta and T. Didius were forcibly ejected when they tried to intercede (Cic. *Orat.* 2.47.197). Norbanus was subsequently tried for his seditious conduct, was defended by M. Antonius, and was acquitted.²¹ Mallius is said to have been tried for the

¹⁸ If he took that law to the People he would be deemed to act against the State. (tr.)

¹⁹ He attacked in concert with conservative supporters, destroyed the bridges, threw down the ballot-boxes, and prevented further action on the proposal. (tr.)

²⁰ Cic. *Nat. Deor.* 3.30.74; Dio, fr. 90 (Greenidge and Clay 80); Oros, 5.15; Victor, *Vir. Ill.* 73.5; cf. Rotondi, 327.

^{20a} Val. Max. 4.7.3; 6.9.13. Cic. *Balb.* 11.28.

²¹ Cic. *Orat.* 2.25.107, 21.89, 40.167, 49.201; Cic. *Part. Orat.* 30.105.

same crime as Caepio (sen.), to have been defended by the same M. Antonius who afterwards defended Norbanus, and to have been exiled in terms of a plebiscite introduced by Saturninus.²² Caepio (jun.) was tried for his violent interference with the proceedings at which Saturninus' corn law was proposed.²³

A proper understanding of these trials is an indispensable approach to the *lex Appuleia maiestatis*. Mommsen's view²⁴ is that both the Tolosan treasure and Arausio were investigated by a special commission established pursuant to a *lex Appuleia*, which was not a general *lex maiestatis*, but merely the enabling statute which created the *ad hoc quaestio*. The date of the *lex* is 103 B.C. rather than 100 because it is close to the events in question, and also because the fairly extensive sources for Saturninus' second tribunate do not mention Caepio (sen.). It was this special commission which condemned Caepio (sen.) and Mallius. The fact that Caepio is reported to have addressed a plea "ad tribunos plebis de exercitus amissione"²⁵ (Auct. *Herenn.* 1.14.24) does not require the inference that the trial was *apud populum* rather than before a *quaestio*, for the plea was not made at the trial, but during the debate on Saturninus' proposal of a law to establish the commission.²⁶ Norbanus was tried under the same *lex Appuleia*, and the charge was admittedly one of *maiestas* (*Straf* 198.1), but for a reason which is not apparent Mommsen finds it possible to dismiss this significant fact with the bald assertion that "dies nöthigt nicht zu der Annahme, dass das appuleische Gesetz eine ständige Majestätsquästion eingesetzt habe". The trial of Caepio (jun.) had nothing to do with the special commission under the *lex Appuleia*, having been conducted *apud populum*.²⁷

It is not possible to follow Mommsen's interpretation of any of these trials. The question of the Tolosan treasure has

²² Licinianus, 13F (Greenidge and Clay 91); Cic. *Orat.* 2.28.125.

²³ Auct. *Herenn.* 1.12.21, 2.12.17; Cic. *Brut.* 44.162, 46.169.

²⁴ *History* 3.440.1; *Staat* 2.1.666.4; *Straf* 198.1. Cf. Kübler, 546-7; Yarnold, 166.

²⁵ To the tribunes of the plebs on the loss of his army. (tr.)

²⁶ Cf. Pollack, 188 and n.5. Zumpt (2.1.227-9) and Greenidge (*Procedure* 350) believe that the trial was *apud populum*.

²⁷ Zumpt (2.1.227-9) believes that this trial was the first to be held under the *lex Appuleia maiestatis*.

been subjected to a penetrating analysis by Lengle (*Arausio* 309-13), who finds that there were two separate traditions. One tradition is not concerned with the legal proceedings against Caepio (sen.), but with the legend that disaster befell anyone who had anything to do with the treasure;²⁸ hence *Arausio* and the misfortunes of Caepio (sen.) and his family, including the prostitution and disgraceful death of his daughter. The other tradition is related to the prosecution of Caepio (sen.) and those to whom he entrusted the treasure for conveyance to Rome,²⁹ but the charge was not *maiestas* but *peculatus*, namely the theft of the treasure which, as booty, was State property (cf. Siber, *Analogie* 51). As the sources do not attest Caepio's condemnation by the *quaestio auri Tolosani*, Lengle suggests that in 104 B.C. he was again prosecuted, in a *quaestio* established under his own judiciary law, and was either acquitted or fined.³⁰

In regard to *Arausio*, Lengle (*Arausio* 304-8, 312-4) believes that in 103 B.C. Norbanus brought a capital prosecution against Caepio (sen.) in the *comitia centuriata* for his loss of an army and flight.³¹ The sedition of Norbanus, for which he was subsequently tried for *maiestas*, took place either at the *anquisitio* preceding Caepio's trial in the *comitia*, or at the trial itself. Lengle believes that the *lex Appuleia maiestatis* was passed in the same year as Caepio's trial and prior to the trial, and that it set up a permanent *quaestio maiestatis*. He holds, however, that Caepio was not tried under the *lex*. His argument is, firstly, that the establishment of a permanent

²⁸ Strabo 4.1.13; Iustinus 32.3.9-11; Gell. 3.9.7; Oros. 5.16.5-6. Perhaps the second version of Valerius Maximus (6.9.13—p. 40) in regard to Caepio's fate is part of this tradition: "Is (sc. Q. Caepio) . . . assecutus in publicis vinculis spiritum deposuit, corpusque eius funesti carnificis manibus laceratum in scalis gemoniis iacens magno cum horrore totius Fori Romani conspectum est".

²⁹ Dio, fr. 90 (Greenidge and Clay 80); Cic. *Nat. Deor.* 3.30.74; Oros. 5.15.25.

³⁰ Broughton (1.566.8) dates the *quaestio auri Tolosani* to 104 or 103 B.C., but does not find the evidence sufficient to say whether Caepio was one of the accused. Schönbauer (106) believes that Caepio was prosecuted only for *Arausio*.

³¹ Badian (*Caepio* 319; cf. Marsh-Scullard, 414) believes that Caepio and Mallius were charged under the *lex Appuleia maiestatis*, but seems to base himself on a misreading of Broughton (1.563-4).

quaestio maiestatis in no way ousted the jurisdiction of the *iudicium populi*. Secondly, he argues that the subsequent trial of Norbanus for his seditious conduct at Caepio's trial is known to have been conducted under the *lex Appuleia maiestatis*, which would not have been possible if his sedition had preceded the passing of the law, for although a special commission was necessarily retrospective, a *quaestio perpetua* could not be. It is not certain that there was an absolute prohibition against retrospectivity in respect of *quaestiones perpetuae*. There are instances of such a prohibition,³² but there are also examples the other way.³³ In any event a *lex Appuleia maiestatis* prior to Caepio's trial is not essential to Lingle's thesis that the trial was *apud populum*. It is suggested that there are grounds on which Lingle can be supported, in respect of his view that Caepio was tried *apud populum*. Mommsen's belief (*History* 3.440.1) that Caepio's plea "ad tribunos plebis de exercitus amissione" (Auct. *Herenn.* 1.14.24) was made during the debate on the proposal to create a special commission strains the language of the passage, the full terms of which are: "Purgatio est, cum consulto negat se reus fecisse. Ea dividitur in imprudentiam, fortunam, necessitatem: fortunam, ut Caepio ad tribunos plebis de exercitus amissione."³⁴ Clearly Caepio was an accused (*reus*) at the time, and put forward the plea "consulto negat se . . . fecisse". It would be unrealistic to say that Caepio attempted to establish his innocence in order to persuade the Assembly not to carry the law creating the special commission; for his argument to succeed it would have been necessary for the Assembly to give a finding that he was innocent, which would not only have prejudged the issue which was to be submitted to the commission, but would in fact have made it superfluous. Furthermore, if Caepio had been speaking at a

³² *Lex Acilia* (Warmington, 366, ll.73-6) and *lex Julia de adulteriis* (Dig. 48.5.13).

³³ Cic. *Cluent.* 54.148 and, particularly, the expressly retrospective *quaestio* which tried Clodius in 61 B.C.—Cic. *Att.* 1.16.2, *Parad.* 4.32; Ascon. 45, 52-3C. See also Strachan-Davidson, 2.41-3; Siber, *Analogie* 44-55; Schulz, *Principles* 231.

³⁴ There is a plea of justification when the accused denies his guilt on the basis of imprudence, necessity, or misfortune (as in the case of Caepio's plea to the tribunes on the loss of his army). (tr.)

legislative assembly, he would have addressed himself *ad populum* rather than *ad tribunos plebis*; but he would quite naturally have addressed himself *ad tribunos* at one of the three *contiones* preceding a trial in the *comitia*.³⁵

Lengle holds that the trial of Mallius which followed that of Caepio was likewise *apud populum*. The difficulty is: "Cn. Mallius . . . L. Saturnini rogatione e civitate plebiscito eiectus".³⁶ Lengle argues that the plebiscite in question was only introduced for the purpose of imposing an *aquae et ignis interdictio* on Mallius after he had anticipated condemnation by going into voluntary exile. It may be added that if Licinianus intended to refer to the *lex* under which Mallius was condemned, it would have been more in accordance with the usual practice simply to have cited the law by the name under which it was known after it had been passed, without reference to the *rogatio* which was responsible for its introduction; for example, simply *lege Appuleia eiectus*, rather than *L. Saturnini . . . eiectus*.³⁷

The trials of Caepio (sen.) and Mallius can properly be described as *maiestas* trials,³⁸ in the sense that they were the latest in the line of cases appropriating the *maiestas* fragment of the *Rechenschaftsprozess* to the *comitia tributa*, but the supposition that they had nothing to do with the *lex Appuleia maiestatis* clears the ground for an approach to the problems of the date and content of this statute. The crucial questions are whether the law established a permanent *quaestio maiestatis*;³⁹ whether the law was carried in 103 B.C., during the first tribunate of L. Appuleius Saturninus,⁴⁰ or in 100 B.C. during his second tribunate;⁴¹ whether the law 'defined' the crime of *maiestas minuta*, and if so, with what degree of precision; and whether any fragments of the text of the law have survived.

³⁵ The same arguments would, of course, apply if it were suggested that the proposal on which Caepio is supposed to have spoken was for a law creating a permanent *quaestio maiestatis*, and not merely a special commission.

³⁶ Cn. Mallius was exiled by plebiscite on the proposal of L. Saturninus. (tr.) Licin. p. 13F.

³⁷ Lengle is supported on the trials of Caepio and Mallius by Klebs, *RE* 2.262-3; Münzer, *Norbanus* 223-5; and Broughton, 1.563, 565.4, 7 and 578.

³⁸ Cf. Schönbauer (105-6), who argues on different grounds that the trial of Caepio (sen.) was for *maiestas*.

The trials of Norbanus and Caepio (jun.), arising out of their acts of sedition at the trial of Caepio (sen.) and the the debate on Saturninus' corn law respectively, raise a number of problems which fall to be considered in connection with the date of the *lex Appuleia maiestatis* and the permanence or otherwise of the *quaestio* which it established. If the trial of Norbanus was held in 94 B.C.,^{41a} it furnishes an important proof that the *quaestio* was permanent, for it seems clear that he was tried before the *quaestio maiestatis*: "C. Norbanum maiestatis crimine publicae quaestioni subiectum";⁴² "ex quo verbo (sc. maiestate minuta) lege Appuleia tota illa causa (sc. Norbani) pendeat;"⁴³ and if this was so then his trial in 94 B.C., for a seditious act committed in 103 B.C., cannot be reconciled with the assumption that in the latter year only an *ad hoc* commission was set up by the *lex Appuleia*. It is not possible to suppose that Norbanus was tried in 102 B.C., at the termination of his tribunate, and that therefore he may have been tried by a special commission established in 103, for M. Antonius, who defended Norbanus, was *homo censorius* at the time of the trial (Cic. *Orat.* 2.198), which means that the trial cannot have been

³⁹ As is believed by Rein, 507-8; Zumpt, 2.1.227-30; Heitland, 2.400; Botsford, 394; Klebs, *RE* 2.262-3; Lengle, *Arausio*—above; H. Last, *CAH* 9.160.4, 161; Schur, 314.2, 318.2; Broughton, 1.563; 567.4, 7; 578; Erwins, 103; Schönbauer, 114; Badian, *Gracchi* 207.38 (although "it would be eccentric to deny that Saturninus set up a permanent court for his new crime" is rather hard on Mommsen). The view that the law set up only a special commission is taken by Mommsen, *History* 3.440.1; *Straf* 198.1; Rotondi, 329; Kübler, 547; Pollack, 189; Sherwin-White, *Extortion* 51; Lear, 21.

⁴⁰ Zumpt, 2.1.227-30; Mommsen, *History* 3.440.1; *Straf* 198; Klebs, *RE* 2.262-3; Lengle, *Arausio*—above; H. Last, *CAH* 9.160.4, 161; Schur, 314.2, 318.2; Broughton, 1.563, 565.4, 7; 578; Schönbauer, 106, 114. The same date is regarded as probable by Rotondi, 329; Kübler, 546; Yarnold, 166; Lear, 21; Gundel, 298. No date is suggested by Greenidge, *Treason* 232; Pollack, 187-9, or Erwins, 103.

⁴¹ Rein, 507-8; Botsford, 394; Heitland, 2.400.

^{41a} Münzer, *Norbanus* 224-6; Broughton, 1.566.7. Cf. Siber, *Analogie* 51.7.

⁴² Norbanus was brought before a public court on a charge of *maiestas*. (tr.) Val. Max. 8.5.2. Cf. Cic. *Orat.* 2.199.

⁴³ The case of Norbanus depended entirely on the expression "diminished *maiestas*" under the *lex Appuleia*. (tr.) Cic. *Orat.* 2.107; cf. 2.197-201, 214.

earlier than 96 B.C. (Badian, *Caepio* 319). The difficulty is, however, to explain why nine years elapsed between the trial of Caepio (sen.) in 103 B.C. and the bringing of Norbanus to book. To meet this difficulty it has been suggested⁴⁴ that the Q. Caepio who was defended by L. Crassus, in the latter's consulship (Cic. *Brut.* 44.162), was Caepio (sen.), whose trial should therefore be assigned to 95 B.C., as that was the year of L. Crassus' consulship. This argument is probably refuted by the fact that Caepio (sen.) died in exile before 95 B.C., so that Cicero (*Brut.* 44.162) should be understood to refer to the trial of Caepio (jun.).^{44a} In any event, a lapse of ten years between Arausio and the calling of Caepio (sen.) to account would be incredible. A persuasive explanation of the delay in prosecuting Norbanus is offered by Münzer (*Norbanus* 226-31), who believes that Norbanus was protected against prosecution by his assumption of the office of quaestor in 102 B.C.;⁴⁵ after his quaestorship he continued to be protected, by Saturninus and Glaucia until 100 B.C., and thereafter by M. Antonius, but a change in the political climate made it possible to prosecute him in 94 B.C.⁴⁶ It may be added that a substantial interval between the trial of Caepio and that of Norbanus seems to follow from the fact that when M. Antonius, defending Norbanus, denounced Caepio's conduct at Arausio, "eorum dolorem, qui lugebant suos, oratione refricabam"⁴⁷ (Cic. *Orat.* 2.48.199).

The trial of Caepio (jun.) was also conducted before the *quaestio maiestatis*,^{47a} but the acceptance of this as evidence for a permanent *quaestio* depends largely on the view that is taken as to the date of the trial. It is known that Caepio was quaestor when he intervened violently in the debate on Saturninus' corn law, but Zumpt (2.1.227-9) does not

⁴⁴ For the references see Münzer, *Norbanus* 224.

^{44a} Münzer, *Norbanus* 224.1, 225; Badian, *Caepio* 320.

⁴⁵ See Münzer, *Norbanus* 227-9 (cf. Broughton, 1.566.7) for the refutation of Mommsen's view (*Staat* 1.551.3) that the quaestorship always preceded the tribunate.

⁴⁶ For the interaction of political forces which brought about the prosecution see also Badian, *Caepio* 325-35.

⁴⁷ My speech revived the grief of those who were mourning their dear ones. (tr.)

^{47a} Auct. *Herenn.* 1.21, 2.17; Cic. *Brut.* 162, 169.

seem to be justified in concluding that the ascertainment of the date of Caepio's quaestorship and of the *lex frumentaria* establishes the date of the *lex Appuleia*. Zumpt's argument is that the quaestorship and the corn law should be dated to 103 B.C.,⁴⁸ rather than to 100,⁴⁹ and that as the *lex Appuleia maiestatis* was introduced as a direct result of Caepio's sedition, the date of the *lex* is 103 B.C. This view depends on the (probably correct) assumption that there was no absolute rule against retrospectivity in a *lex* creating a *quaestio perpetua*. But the case of Norbanus shows that there is no need to assume the temporal proximity of the trial to the sedition, and if the Q. Caepio who was defended by L. Crassus in 95 B.C. is not Caepio (sen.) he must be Caepio (jun.). It seems safer to accept 95 B.C. as the date of the trial of Caepio (jun.), so that this case is further evidence of a permanent *quaestio maiestatis* under the *lex Appuleia*.

It is possible that support for a permanent *quaestio* is also to be found in the trials of Sex. Titius and C. Appuleius Decianus, both of which were conducted in 98 B.C. The charge against Sex. Titius was that he kept *imaginem L. Saturnini* at his house.^{49a} The evidence of Cicero (*Rab. Perd.* 9.24) that he was tried by a *quaestio*—*statuerunt equites Romani illo iudicio*—is to be preferred to the suggestion (Val. Max. 8.1. damn. 3) that he was tried *apud populum*. The problem is to identify the *quaestio*, for it cannot be supposed that Saturninus legislated against the keeping of *imagines Saturnini*. A possible explanation is that the principal charge against Titius was sedition, or disregard of tribunician intercession, which would have fallen under the *lex Appuleia*, and that the *imago Saturnini* was thrown in for good measure.⁵⁰ Titius, who held the office of tribune in 99 B.C., persisted with an agrarian bill despite the intercession of his colleagues (Obsequens 46), and

⁴⁸ Cf. H. Last, *CAH* 9.165 and n.3; Rice Holmes, *Republic* 1.354-5; Badian, *Caepio* 319 and n.9.

⁴⁹ The date accepted by Heitland, 3.397-8; Münzer, *RE* 2A.2.1786; Schur, 320 and n.3; Broughton, 1.578 nn. 3, 5; Greenidge and Clay, 107.

^{49a} Cic. *Rab. Perd.* 9.24; Val. Max. 8.1.damn.3.

⁵⁰ Cicero, *Rab. Perd.* 9.24, was concerned only with the *imago Saturnini*, for he cited the case merely to lend point to his criticism of Labienus for parading a similar *imago* at the trial of Rabirius.

was known as *seditionus civis et turbulentus* (Cic. *Orat.* 2.11.48). That the charge against him was *maiestas* may also, perhaps, be inferred from the fact that Valerius Maximus, immediately after discussing Titius' case, refers to the case of Claudia—*adiiciatur his Claudia*—who is known to have been charged with *maiestas* (pp. 28-9), and then turns to cases of a different kind: "possumus et ad illos brevi deverticulo transgredi" (8.1 *damn.* 4,5). Decianus was condemned for having regretted the death of Saturninus in the course of a speech of accusation against P. Furius.^{50a} The charge was probably *maiestas*, but Cicero, it is to be noted, does not mention *equites Romani* as he does in the same passage in the case of Sex. Titius.^{50b} It may be that there was no basis for a charge of sedition against Decianus, and that he was therefore tried *apud populum*.

The cases discussed may well attest a permanent *maiestas* court, but they do not directly take the date of the *lex Appuleia* much further. The general tendency of the authorities who debate the date of the law (p. 45, nn. 40 and 41) is to consider whether the main weight of Saturninus' legislative programme fell within his first or his second tribunate, and from this to estimate which tribunate is more likely to have called for a *lex maiestatis*. Following this approach, a fairly good case can be made out for 103 B.C. Saturninus contemplated a fresh attempt to apply the economic policy of the Gracchi,⁵¹ and with this policy in view he would have remembered the undisguised murder of Ti. Gracchus.⁵² He would have remembered that the *lex Sempronia* of C. Gracchus, forbidding the imposition of a capital penalty on a Roman citizen *iniussu populi*,⁵³ had not forestalled the judicial murder of its author under the doubtful authority of a *senatusconsultum ultimum*. He would have remembered that both of the Gracchi had proposed their reforms as tribunes, and that violence had been done to Tiberius while a candidate for re-election,⁵⁴ and to

^{50a} Cic. *Rab. Perd.* 9.24; Val. Max. 8.1. *damn.* 2.

^{50b} Badian, *Decius* 96. Cic. *Rab. Perd.* 9.24.

⁵¹ Stuart Jones, 170; Heitland, 2.398; H. Last, *CAH* 9.164-5.

⁵² Livy, *Per.* 58; Auct. *Herenn.* 4.55.68; Val. Max. 3.2.17; Vell. 2.3.2; Plutarch, *Ti. Gracch.* 19.

⁵³ Cic. *Rab. Perd.* 4.12; *Sest.* 28.61; *Cat.* 4.5.10; *Verr.* 2.5.63, 163.

Gaius shortly after his term of office (Livy, *Per.* 61). He would therefore have known that the life-expectation of a reform-minded tribune was short, and that any revival of the Gracchan policy should be preceded by an attempt to ensure that he survived long enough to put it into operation.⁵⁵ It may well be that protection was sought in the *lex Appuleia*, introduced at the very outset of his first tribunate.

A useful argument in favour of 103 B.C. is put forward by Schönbauer (106), on the basis of Cicero's assertion (*Leg.* 2.6.14) that Saturninus' laws were invalidated by the Senate after his death: "M: Igitur tu Titias et Appuleias leges nullas putas? Q: Ego vero ne Livias quidem. M: Et recte, quae praesertim uno versiculo senatus puncto temporis sublatae sint."⁵⁶ The argument is that as the trial of Norbanus (to which the trial of Caepio (jun.) should be added) proves the survival of the *lex Appuleia*, it should be assumed that it was only the laws of Saturninus' second tribunate which were abolished by the Senate. The argument is not, of course, conclusive, and indeed Schönbauer himself notices that in any case the Optimates would not have wanted to abolish a law which punished injuries to *maiestas populi Romani*. The latter point can probably be taken further, for there is a curious appropriation by the Optimates of *maiestas populi Romani* in the *senatus-consultum ultimum* which advised that extreme steps be taken against Saturninus and Glaucia. The form of the 'last decree' had previously been: "ut consul videret, ne quid res publica detrimenti caperet"⁵⁷ (Cic. *Cat.* 1.2.4). The decree against the

⁵⁴ Livy, *Per.* 58; Cic. *Cat.* 4.2.4; Dio, fr. 83.8 (Greenidge and Clay, 8.)

⁵⁵ If Saturninus' policy should be put on a broader basis, so as to include an extension of the effective power of the tribunes, intervention in the regular administration, and the subjection of the upper magistrates to detailed control of their activities (Sherwin-White, *Violence* 4), then *a fortiori* Saturninus needed protection.

⁵⁶ M: Do you regard the Titian and Appuleian laws as invalid? Q: I do not regard even the Livian as valid. M: And rightly so, especially since they were instantaneously abolished by the Senate. (tr.) Badian, *Gracchi* 218.87, takes Cicero's meaning to be that only the *leges Liviae* (of L. Drusus) were abolished. But "ego vero ne Livias quidem" surely implies: I regard the *leges Titiae et Appuleiae* as invalid, and I do not regard even the *leges Liviae* as valid.

⁵⁷ Let the consul see to it that the State comes to no harm. (tr.)

Appuleians was in the form: "ut . . . consules . . . operam darent ut . . . imperium populi Romani maiestasque conservaretur."⁵⁸ The older form was again used in the decree against Lepidus in 77 B.C. (Sall. *Orat. Phil.* 22), which suggests that the *maiestas* form may have been confined to the decree of 100 B.C. It is also significant that, whereas the decree against C. Gracchus had authorized only the consul L. Opimius (Cic. *Cat.* 1.2.4), the decree of 100 B.C. advised the consuls to recruit such tribunes and praetors as they deemed fit, all of whom responded except Saturninus and Glaucia (Cic. *Rab. Perd.* 7.20). It may be argued that the decree contemplated the performance of acts of sedition under its authority, and that it was feared that when the wheel turned those responsible would be prosecuted under the *lex Appuleia*. By involving the tribunes and praetors in the action of the consuls it was hoped to leave nobody with sufficiently clean hands to invoke the *lex maiestatis* against those who took violent action against Saturninus and Glaucia, and by relying on *maiestas* it was intended to set up a 'counter-attraction' to the concept formulated by the *lex Appuleia*, and so to confuse the jurors in any possible prosecution under the *lex*. It was a defence under the *lex Appuleia* to argue that seditious conduct had not diminished *maiestas populi Romani* but had augmented it (pp. 52-53), and in case of need the assailants of Saturninus and Glaucia would raise this argument, and would cite a decree of the Senate in support of it.⁵⁹ The Optimates had found a way round the *lex Sempronia* by the 'last decree' of 121 B.C., and they found a similar way around the *lex Appuleia maiestatis*—but without abolishing the *lex*.⁶⁰

The facts alleged against Norbanus were that he had used violence at the trial of Caepio (sen.), and was therefore guilty of seditious conduct.^{60a} M. Antonius, for the defence, admitted most of the facts alleged in the indictment, but joined issue with the accuser, P. Sulpicius Rufus, on the construction of the

⁵⁸ Let the consuls see to the preservation of the empire and *maiestas* of the Roman People. (tr.) Cic. *Rab. Perd.* 7.20. The language is strikingly similar to that of the *maiestas* treaty.

⁵⁹ Which is precisely the gravamen of Cicero's defence of C. Rabirius. Cic. *Rab. Perd.* 7.20-11.31.

⁶⁰ For a further argument in favour of 103 B.C. see p. 290 and n. 78.

expression *maiestatem minuere*, as it appeared in the *lex Appuleia*: "pleraque enim de eis, quae ab isto obieiebantur, cum confiterer, tamen ab illo maiestatem minutam negabam, ex quo verbo lege Appuleia tota illa causa pendebat."⁶¹ It was futile to attempt a 'definition' of the expression: "atque in hoc genere causarum non nulli praecipunt ut verbum illud, quod causam facit, breviter uterque definiat, quod mihi quidem perquam puerile videri solet".⁶² Neither Sulpicius nor Antonius essayed a 'definition', but confined themselves to debating the meaning of *maiestatem minuere*: "quod quidem in illa causa neque Sulpicius fecit neque ego facere conatus sum; nam quantum uterque nostrum potuit, omni copia dicendi dilatavit, quid esset maiestatem minuere".⁶³

At this point it was common cause that Norbanus had committed the acts alleged, but the question was whether in so doing he had diminished *maiestas populi Romani*. It was now for each side to state what it understood by *maiestas*, in order to crystallize the issue as to whether the actions of the accused had diminished *maiestas*. Sulpicius proposed the following: "*maiestas est in imperii atque in nominis populi Romani dignitate, quam minuit is qui per vim multitudinem rem ad seditionem vocavit*"⁶⁴ (Cic. *Part. Orat.* 30. 105). Antonius replied with: "non minuit maiestatem quod egit de

^{60a} Thus: "quod egit de Caepione turbulentius", and "qui per vim multitudinem rem ad seditionem vocavit" (Cic. *Part. Orat.* 30.105); "hominem seditiosum furiosumque" and "illam Norbani seditionem" (Cic. *Orat.* 2.28. 124); "vim, fugam, lapidationem, crudelitatem tribuniciam" and "vi pulsum ex templo L. Cottam et T. Didium" (Cic. *Orat.* 2.42.197); "seditiosum civem et in hominis consularis calamitate crudelem" (Cic. *Orat.* 2.48.198); "seditiosum et inutilem civem" (Cic. *Off.* 2.14.49).

⁶¹ I conceded most of my opponent's points, but denied that my client had diminished *maiestas*: under the *lex Appuleia*, the whole case turned on this expression. (tr.) Cic. *Orat.* 2.25.107; cf. 2.49.201. Henderson (81.63) can scarcely be right when she says that Cicero here considers *maiestas minuta*, "as defined by Sulla". It is reasonable to suppose that when Cicero says *lege Appuleia* he does not mean *lege Cornelia*.

⁶² Some suggest that in this sort of case each side should briefly define the expression on which the case is based, but I regard this as ridiculous. (tr.) Cic. *Orat.* 2.108; cf. 2.109.

⁶³ Neither Sulpicius nor I attempted a definition: rather did each of us, to the best of his ability, broadly discuss the nature of a diminution of *maiestas*. (tr.) Cic. *Orat.* 2.109; cf. 2.201.

⁶⁴ See p. 52.

Caepione turbulentius; populi enim Romani dolor iustus vim illam excitavit, non tribuni actio; maiestas autem, quoniam est magnitudo quaedam populi Romani in eius potestate ac iure retinendo aucta est potius quam diminuta”⁶⁵ (ibid.). This discussion was followed by a joinder of issue on the crisp question: “minueritne maiestatem qui voluntate populi Romani rem gratam et aequam per vim egerit”⁶⁶ (ibid.). The defence put forward by Antonius relied on the proposition that violence was not necessarily culpable, for many desirable reforms had been effected by this means (Cic. *Orat.* 2.48.199). Caepio (sen.) had incurred the just wrath of the Roman People by his conduct at Arausio (ibid.), and in using violence against him Norbanus had simply acted as the People’s instrument: “populi enim Romani dolor iustus vim illam excitavit, non tribuni actio” (Cic. *Part. Orat.* 30.105); “si magistratus in populi Romani potestate esse debeat, quid Norbanum accusas, cuius tribunatus voluntati paruit civitatis?”⁶⁷ (Cic. *Orat.* 2.40.167). Although Antonius devoted the greater part of his speech to an emotional appeal (Cic. *Orat.* 2.49.200-1), and touched only briefly on the *lex Appuleia* and the question “quid esset minuere maiestatem” (2.49.201), he made one significant submission of law: “maiestas autem . . . populi Romani in eius potestate ac iure retinendo aucta est potius quam diminuta” (Cic. *Part. Orat.* 30.105). By acting as an instrument for the satisfaction of the People’s just anger Norbanus had increased rather than diminished *maiestas populi Romani*. This defence of *maiestatem auxi, non minui* was destined to recur frequently in subsequent *maiestas* trials, and to furnish a sympathetic

⁶⁴ *Maiestas* is the status resulting from the empire and renown of the Roman People, and was diminished by the forcible incitement of the multitude to sedition. (tr.)

⁶⁵ The disturbance that the tribune raised against Caepio was not a diminution of *maiestas*, for it was inspired not by his act but by the just grief of the Roman People: *maiestas*, being the greatness, as it were, of the Roman People in preserving its power and rights, was increased rather than diminished by this action. (tr.)

⁶⁶ Is *maiestas* diminished by an act which is desired by and advantageous to the Roman people? (tr.)

⁶⁷ If a magistrate is supposed to be under the control of the Roman People, why do you accuse Norbanus who, as a tribune, was bound by the will of the State? (tr.)

jury with a convenient peg on which to hang an acquittal.⁶⁸

The trial of Caepio (jun.) was likewise based on allegations of violence: "Caepio . . . cum viris bonis impetum facit, pontes disturbat, cistas deicit, impedimento est quo setius feratur: arcessitur Caepio maiestatis"⁶⁹ (Auct. *Herenn.* 1.12.21). As in the case of Norbanus, the accuser submitted a proposition on the question of *maiestas minuta*: "maiestatem is minuit, qui ea tollit ex quibus rebus civitatis amplitudo constat. Quae sunt ea, Q. Caepio? Suffragia populi et magistratus consilium. Nempe igitur tu et populum suffragio et magistratum consilio privasti, cum pontes disturbasti?"⁷⁰ (Auct. *Herenn.* 2.12.17). The defence submitted a counter-proposition: "Maiestatem is minuit qui amplitudinem civitatis detrimento adficit. Ego non adfeci, sed prohibui detrimento; aerarium enim conservavi, libidini malorum restiti, maiestatem omnem interire non passus sum" (ibid.).⁷¹ The defence of *maiestatem auxi, non minui* appears again. The facts on which Caepio relied were that when Saturninus had proposed his corn law, the Senate had decreed that if he submitted his law to the Assembly he would be deemed to act "*adversus rem publicam*". Saturninus had disregarded the intercession of his colleagues, and had put his bill to the vote. Thereupon Caepio, alleging that Saturninus' action was "*adversus rem publicam*", had violently overthrown the proceedings (Auct. *Herenn.* 1.12.21). Caepio, like Norbanus, claimed that he had been an instrument for the protection of *maiestas populi Romani* rather than for its diminution.

⁶⁸ See, for example, the case of Gabinius (pp. 76-7, 249).

⁶⁹ Caepio attacked in concert with conservative supporters, destroyed the bridges, threw down the ballot-boxes, and prevented further action on the proposal. He was accused of *maiestas*. (tr.)

⁷⁰ It was a diminution of *maiestas* to destroy those things on which the greatness of the State depends. What are these things, Q. Caepio? The People's franchise and the meeting convened by the magistrate. Did you not, then, deprive the People of its vote and the magistrate of his meeting when you destroyed the bridges? (tr.)

⁷¹ It is a diminution of *maiestas* to prejudice the greatness of the State. I did not do this, but averted such prejudice: for I safeguarded the treasury, withstood the whims of wicked men, and prevented *maiestas* from perishing entirely. (tr.)

It is clear that the *lex Appuleia* used the expression *maiestatem minuere*, but without 'defining' it. It is not certain, however, that Schönbauer (105; cf. Gundel, 298) is justified in inferring, from the absence of such a 'definition' in the *lex*, that "ebenso politisch-elastisch war anscheinend der Tatbestand gefasst, der nun neu unter Strafe gestellt wurde".⁷² A distinction should be drawn between the appearance in the *lex* of the expression *maiestatem minuere* and the setting out of a category of wrongful acts in respect of which the *quaestio* was to have jurisdiction. The Republican practice was to set out categories "in a circumstantial, clumsy, pedantic and meticulous style, the purpose of which is to achieve complete certainty" (Schulz, *Legal Science* 96). The typical form of a 'category' clause is illustrated by the law of C. Gracchus against judicial corruption (Cic. *Cluent.* 54.148): "Quicumque fecerit vendiderit emerit habuerit dederit . . . Qui tribunus militum legionibus quattuor primis quive quaestor tribunus plebis (deinceps omnes magistratus nominavit). . . . Qui eorum coit coierit convenit convenerit quo quis iudicio publico condemnaretur"⁷³ (cf. *lex Acilia*, Warmington, 316-70). There is no reason to suppose that the *lex Appuleia* was an exception to the rule, so that it should be assumed that it set out a detailed category of acts, and that the jurisdiction of the *quaestio* was restricted to that category. The two known cases under the *lex* dealt with acts of violence and seditious conduct, and the disregard of tribunician intercession, and there is reason to believe that the third possible trial *lege Appuleia*, that of Sex. Titius, was also concerned with sedition (p. 47). It therefore seems reasonable to suppose that the *lex* set out a category in some such form as: "qui homines ad seditionem vel vim convocavit convocaveritve"⁷⁴ quive tr. pl. intercedenti non paruit parueritve." The *lex* would

⁷² A similar view is expressed by Zumpt (2.1.230-1): "Das Gesetz enthielt nur den einen Ausdruck (sc. *maiestatem minuere*) und gab keine besonderen Fälle an, in denen eine Verringerung der Majestät stattgefunden hätte."

⁷³ Whoever shall do sell buy have or give . . . Whoever as military tribune of the first four legions or as quaestor tribune of the plebs (the names of all the magistrates followed) . . . Whoever of these has combined or shall combine or has agreed or shall agree to secure the condemnation of anyone by a public court. (tr.)

⁷⁴ Cf. *Dig.* 48.4.1.1.

therefore not have left any room for uncertainty as far as the acts of the accused, viewed objectively, were concerned. For example, if the *lex* had been in the form suggested, it would not have applied to "qui loca occupavit occupaveritve vel templa" (cf. *Dig.* 48.4.1.1). The 'undefined' part of the *lex* was its reference to "*maiestatem minuire*", for culpability under the category was qualified by the fact that it had to be shown that the accused had diminished *maiestas populi Romani*. The principal element in the crime was the diminution of *maiestas*, and the subordinate element was the bringing about of that diminution in a certain manner. In modern terms an indictment under the *lex Appuleia* would read: 'That the accused is guilty of the crime of diminishing the maiestas of the Roman People, in that he incited the multitude violently and seditiously to overthrow Saturninus' meeting.' The text of the law may therefore have been something like this: "qui homines ad seditionem vel vim concitavit concitaveritve quive tr. pl. intercedenti non paruit parueritve quo maiestas populi Romani minueretur."

Two inscriptions which may go back to the period of Saturninus, namely the *lex Latina Bantiae reperta*⁷⁵ and the *lex Tarentina*,⁷⁶ have provoked a great deal of discussion. The current view is that the *lex Bantia* should be assigned to one of the tribunes of Saturninus.⁷⁷ It has been suggested that it is a fragment of his agrarian law, or of a judiciary law of Glaucia.⁷⁸ Stuart Jones (170f.) thought it was from the *lex Appuleia maiestatis*, and his view has received fairly wide support.⁷⁹ His argument is that "ioudex ex h.l. plebive scito factus" (*ll.* 15-6) is a reference to the president of a *quaestio* established by the law. This is probably correct, but it proves

⁷⁵ The so-called "Latin law of Bantia". For the text see Warmington, 294-302.

⁷⁶ A fragment found at Tarentum. For the text see Schönbauer, 110.

⁷⁷ Stuart Jones, 171; Carcopino, *Gracchi* 211 and n.4; H. Last, *CAH* 9.160.4; Sherwin-White, *Citizenship* 146; Warmington, 294; Wenger, 373 and nn. 18, 19.

⁷⁸ Wenger, 373 and nn. 18, 19; see also the authorities cited by Stuart Jones, 171. Carcopino, *Gracchi* 205-34.

⁷⁹ M. Gelzer, *Hermes* LXIII (1935) p. 124; Warmington, 294; H. Last, *CAH* 9.160.4, 161; Marsh-Scullard, 415; Sherwin-White, *Citizenship* 146.

only that the fragment is "ein Stück öffentlichen Strafrechts" (Wenger, 373). The theory is in no way strengthened by Stuart Jones' assumption that Bantia was bound to Rome by a *maiestas* treaty, for the existence of such a treaty is as hypothetical as the attribution of the fragment to the *maiestas* law. Yarnold (166) draws attention to a serious difficulty. The *lex Bantia* (ll. 14-32) provided for the taking of oaths by magistrates and senators to observe the provisions of the law, and not to act against or frustrate it. Saturninus' agrarian law of 100 B.C. is known to have provided for a similar oath,^{79a} and Metellus Numidicus went into exile rather than swear to it;⁸⁰ there would have been less doubt about the oath imposed by the agrarian law if a similar oath had been introduced by the *maiestas* law three years previously. Schönbauer (105) argues that the fragment should contain some reference to *maiestas populi Romani* if it were part of a *maiestas* law. This argument is not conclusive, for apart from some procedural provisions (ll. 1-6), the fragment deals only with the sanction and the taking of the oath; when the *lex Acilia* imposes a penalty for frustrating the holding of a trial (Warmington, 362), it does not repeat the substantive category (ib., 318) which enables the general nature of the law to be ascertained. Schönbauer (107-8) is, however, on safer ground when he notices that the fragment does not include *tribuni militum* among the magistrates who are enjoined to take the oath, which is a curious omission in view of the fact that Saturninus based his legislative programme largely on the interests of Marius' veterans.

The *lex Tarentina* has similarly formed the subject of what Badian (*Gracchi* 206) aptly terms "a parlour game". It has been identified as a judiciary law and as one or other of

^{79a} Livy, *Per.* 69; Appian, *B.C.* 1.29.

⁸⁰ Livy, *Per.* 69; Appian *B.C.* 1.29; Cic. *Dom.* 31.82; *Sest.* 16.37; Auct. *Vir. Ill.* 62, 73. Schur (318) believes that Metellus was prosecuted under the *lex Appuleia maiestatis*. For a criticism of this view see Brecht, *Perduellio* 300.3. It need only be added that the sources do not attest any violence or sedition on Metellus' part when he refused to take the oath. On the contrary, his objection to swearing was specifically because, in his view, the *lex* had been carried *per vim*. Livy, *Per.* 69; Cic. *Sest.* 16.37; Auct. *Vir. Ill.* 62.

the *leges de repetundis*.⁸¹ Schönbauer (109-17) argues that it is part of the *lex Appuleia maiestatis*. He is probably correct when he says that the inclusion in the fragment of citizenship or its equivalent as the reward of a successful accuser does not require the assumption of a *lex repetundarum*, for a similar reward is attested in the case of *ambitus* (Cic. *Balb.* 25.57; *Cluent.* 36.98). It also seems clear (111, 113) that *nomen deferre* (l. 18) is from a criminal *lex*. Schönbauer (112) then bases an argument on the fact that the *lex Tarentina* provides for publication of the law throughout the empire, to which he links the provision that all magistrates are to swear to the law. He holds that the extortion law would have been so well known by *circa* 103 B.C. that general publication of a new *lex repetundarum* would have been superfluous. Furthermore, an extortion law would have been in the interest of all allies, but, with the exception of Latins, allies are excluded from the fragment; the reason is that the innovation of an oath by all magistrates concerned only the *populus Romanus*, not provincials and allies. A further point made by Schönbauer can be used to meet the possible repetition in the case of the *lex Tarentina* of the objection raised by Yarnold to Stuart Jones' hypothesis on the *lex Bantia*, for he points out (112-3) that the obligation to take an oath is made applicable only to magistrates, and not to senators, and argues that the imposition of an oath on the latter first occurred in 100 B.C. (presumably in the agrarian law). He concedes (113-4) that a *lex* establishing a *quaestio* during the period in question could have been *de repetundis* or *de ambitu*, as well as *de maiestate*, but having already excluded an extortion law, he says that at this time *ambitus* concerned no one except the *comitia* at Rome, and would not have been of sufficient general interest to justify universal publication. But the innovation of placing *maiestas populi Romani*, which allies in many territories had contracted to respect, under the jurisdiction of a *quaestio perpetua* would have understandably called for general publication (114, 116). Finally, Schönbauer conjectures (115) that the incomplete ". . . te omnium rerum" (l. 3) should be restored as "de maiestate omnium rerum". In

⁸¹ For the references see Schönbauer, 92-104.

view of the impressive argument developed by Schönbauer, it may reasonably be supposed that if either of the elusive fragments is part of the *lex Appuleia maiestatis*, it is the Tarentine rather than the Bantian.

The Lex Maiestatis: Varius and Sulla

A. LEX VARIA MAIESTATIS

The *lex Appuleia* had brought only a small segment of the *Rechenschaftsprozess* under the *quaestio maiestatis*, a segment which covered sedition in Rome itself, but which did not touch on external relations. The first attempt to bring external treason under the permanent *quaestio maiestatis* was made by the *lex Varia* of the tribune Q. Varius Hybrida. This assertion is only just possible, for the only direct evidence that the Varian law was *de maiestate* is Cicero *ap. Ascon.* 79C, but this evidence is generally accepted. The terms of the law were "ut quaereretur de iis, quorum ope consiliove socii contra populum Romanum arma sumpsissent".¹

Appian (*B.C.* 1.37) places the law between the death of Drusus (*B.C.* 1.36) and the outbreak of the Social War (*B.C.* 1.38), but Asconius (22C) and Valerius Maximus (8.6.4) say that the war had already begun when the law was passed. Zumpt (2.1.250-1) argues that as Drusus was probably murdered in November, 91 B.C., at the end of his tribunate, the new tribunes would not have had enough time to introduce the law that year; as Cicero (*Brut.* 303) discusses the death of L. Crassus before turning to the outbreak of the war and the introduction of the *lex Varia*, and as Crassus died in September 91 and C. Aurelius Cotta was condemned under the *lex* a few months later, the war should be dated to the end of 91, and the *lex* to soon afterwards. This view requires the arbitrary rejection of the order

¹ To investigate those whose assistance and advice had encouraged the allies to take up arms against the Roman People. (tr.) Ascon. 22C. Cf. Val. Max. 8.6.4; Appian, *B.C.* 1.37.

of events in Appian (*B.C.* 1.36.-1.37.-1.38). The present participle in Appian should be noticed: κατὰ τῶν τοῖς Ἰταλιώταις ἐπὶ τὰ κοινὰ φανερώς ἢ κρύφα βοηθούντων. If Appian believed that the war had already begun, βοηθησάντων would have corresponded more accurately than βοηθούντων to *sumpsissent* (Ascon. 22C), and *coacti essent* (Val. Max. 8.6.4). It should therefore be accepted that Appian placed B.C. 1.37 between 1.36 and 1.38 because he believed, rightly or wrongly, that this was the correct sequence. Modern authorities date the law to 91 (Mommsen, *Straf* 198), the end of 91 or early 90 (Strachan-Davidson, 2.84), or 90 (Rotondi, 339; Broughton, 2.26). Gundel (*RE* 8A. 388-9) believes that the war began in March 90, but that in October 91 there was unrest at Asculum and in Oscan territory, to which Asconius may be referring when he speaks of *Italico bello exorto* (22C); but he dates the law to the beginning of 90, on the ground that it was passed only after Varius took office as tribune on 10 December 91.

M. Aemilius Scaurus is crucial to the *lex Varia*. In Clark's edition of Asconius (22C) Cicero is reported to have said, in his defence of M. Scaurus, that M. Aemilius Scaurus had been the accused in *one* prosecution at the instance of Varius, namely a charge under the *lex Varia*: "ab eodem etiam lege Varia custos ille (sc. M. Aemilius Scaurus) rei publicae proditiōis est in crimen vocatus: vexatus a Q. Variō tribuno plebis est."² The comment of Asconius (22C) is that after the introduction of the *lex Varia*, whose terms he sets out briefly, Scaurus was prosecuted by Varius. But in the context of Asconius' commentary he can be referring only to a prosecution *apud populum* and not under the *lex*, for "Q. Varius tribunus plebis . . . adesse apud se Scaurum iuberet" seems to mean a summons to the *anquisitio* preceding a trial in the *comitia*; only the praetor could summon to a *quaestio* (Wlassak, *Anklage* 6-8). And in the same passage Asconius records that Scaurus addressed himself to *Quirites*, which can only mean the Roman People in assembly, not the *iudices* of a *quaestio*. A further difficulty in Clark's text is that *ab eodem* in the citation of Cicero's own words must mean Varius, which makes a Q.

² M. Aemilius, the guardian of the State, was also summoned by the same man under the *lex Varia*, on a charge of *proditio*. (tr.)

Vario tribuno plebis redundant. Some authorities^{2a} seem to have seen a different text of Asconius, in which "non multo ante" is excised from the beginning of Asconius' commentary, and is attached to the excerpt of Cicero's own words: "ab . . . vocatus; vexatus a Q. Vario tribuno plebis est non multo ante", which avoids redundancy. On this reading Cicero refers to a prosecution *apud populum* by Varius, and to a charge under the *lex Varia* by *eodem* (not being Varius), which gives an understandable order of events: Varius prosecuted Scaurus *apud populum*; then the *lex Varia* was passed; then *eodem* accused him under the *lex*.

It is probable that *eodem* was Q. Servilius Caepio (jun.), who accused Scaurus of extortion under Glaucia's law, in 92 or 91.³ This was before a *quaestio*, and raises no difficulty. But the tradition regarding the trial *apud populum* is confused. Valerius Maximus (3.7.8) says that Scaurus was accused "quod ab rege Mithridate ob rem publicam prodendam pecuniam accepisset".⁴ He then attributes to Scaurus a crushing attack on Varius, which forced the latter to drop the case: "Varius Severus Sucronensis Aemilium Scaurum, regia mercede corruptum, imperium populi Romani prodidisse ait; Aemilius Scaurus huic se affinem esse culpae negat: utri creditis?"⁵ Asconius (22C) attests a similar attack by Scaurus on Varius, also in a trial *apud populum*, and a similar abandonment of the case: "Q. Varius Hispanus M. Scaurum principem senatus socios in arma ait convocasse; M. Scaurus princeps senatus negat; testis nemo est: utri vos, Quirites, convenit credere?"⁶ Cicero (on the older reading of Asconius), Asconius, and Valerius Maximus therefore agree that Varius prosecuted Scaurus in

^{2a}Zumpt, 2.1.429.133; Klebs, *RE* 1.586; Greenidge and Clay, 1 ed., 1903, p. 106; but not the revised ed. of E. W. Gray, 1960, p. 137.

³Cicero, *ap.* Ascon. 21C; Asconius ad loc. See Greenidge and Clay, 1 ed., p. 106, for the identity of *eodem*, 2 ed., p. 127, for the date. Cf. Broughton, 2.16.6; Badian, *Caepio* 328, 341.

⁴Of having received money from King Mithridates to betray the State. (tr.)

⁵Varius Severus Sucronensis alleges that Aemilius Scaurus was bribed by the king to betray the empire of the Roman People. Aemilius Scaurus says that he had no part in this crime. Whom do you believe? (tr.)

⁶Q. Varius the Spaniard alleges that M. Scaurus, the leader of the Senate, incited the allies to arms. M. Scaurus, the leader of the Senate, denies it. There are no witnesses. Citizens, whom should you believe? (tr.)

the *comitia*. But Valerius attests a trial, probably in 91 B.C. (Broughton, 2.6.16) for *proditio* in connection with Mithridates. Asconius says it was on a charge of inciting war—*belli concitati crimine*—which means the Social War, for Asconius reports that Scaurus described the charge as summoning the allies to arms. Cicero himself does not give the charge, but in the context of his statement that the charge by Caepio (jun.) under the *lex Varia* was *proditio*, it probably follows that the trial *apud populum* was on a similar charge. All three sources seem to be referring to the same trial, but the problem is to reconcile *proditio* in re Mithridates with *proditio* in re the Italian allies.

Zumpt (2.1, 429-30) believes that Asconius' *socii* included Mithridates, because of: "Scaurus senex cum a Vario tribuno plebis argueretur, quasi socios et Latium ad arma coegisset".⁷ The crux of the argument is that at the time of the allied revolt there were substantial ties between prominent Romans and Mithridates, and that Scaurus was believed to have had a finger in both pies. This is not impossible, although *socios et Latium* looks very much like a hendiadys. It should be noted that a charge of extortion under the *lex Servilia Glaucia* was brought by Caepio (jun.) against Scaurus, "ob legationis Asiaticae invidiam et adversus leges pecuniarum captarum".⁸ The *legatio Asiatica* here noticed would probably have been an embassy to Mithridates, possibly in 93 B.C., of which Scaurus was a member (cf. Broughton, 2.15, 16.6). These facts may perhaps help to explain the order of events. It is known that Scaurus wriggled out of the charge of extortion arising out of the *legatio Asiatica* which Caepio (jun.) brought against him (Ascon. 21C). It may well be that Caepio, the inveterate enemy of the Drusus faction to which Scaurus belonged,^{8a} was not to be shaken off, and tried again. He persuaded Varius, on his assumption of office as tribune, to prosecute Scaurus *apud populum*. As Scaurus had also supported the Livian line on the Italian question, his

⁷ When Scaurus was charged by the tribune Varius with having incited the allies and Latium to arms. (tr.) Auct. *Vir. Ill.* 72.

⁸ Because of the unpopularity he had incurred as a result of his Asiatic embassy and his contravention of the extortion law. (tr.) Ascon. 21C.

^{8a}Badian, *Caepio* 325, 328, 341.

susceptibility in the East and his liberalism in the West could conveniently be visited upon him in one prosecution.

But Caepio and Varius failed again. Thereupon, realizing that they could never insulate the Assembly against Scaurus, they decided to put it up to the less impressionable equites who would make up the jury panel of the *quaestio maiestatis*. Hence the *lex Varia*. Proceedings *apud populum* had to be instituted by a tribune, but anyone could be an accuser before a *quaestio*.⁹ Caepio would prosecute, thus avoiding further sneering references to Varius' origin. That Caepio was in fact the accuser is attested by Cicero's *eodem* (Ascon. 22C), which refers back to Cicero's mention of the prosecution brought by Caepio under the extortion law (Ascon. 21C); there is also a passage of uncertain origin cited by Klebs (*RE* 1. 586): "Q. Caepio in M. Aemilium Scaurum lege Varia".¹⁰

Cicero (*Brut.* 89.304) says that the *quaestio Variana* was the only court which sat during the war, the others having been discontinued, and there can be no question of rejecting his testimony, for he was in court: *cui frequens aderam*. But Asconius 73-4C cannot easily be reconciled with Cicero: "Bello Italico . . . cum multi Varia lege inique damnarentur, quasi id bellum illis auctoribus conflatum esset, . . . nactus iustitii occasionem senatus decrevit ne iudicia, dum tumultus Italicus esset, exercerentur: quod decretum eorum in contionibus populi saepe agitatum erat."¹¹ This passage seems to mean that the Varian commission was suspended, for if the *iustitium* had only concerned other courts, *cum multi damnarentur* would be irrelevant. Why was the decree *saepe agitatum* at meetings? It may be that no one was much concerned at the suspension of the courts for other crimes, but the commission which was trying Rome's enemies would have been of great popular concern. Mommsen (*Straf* 364.2)

⁹ Wlassak, *Anklage* 6-8; Lengle, *Straf* 26; Greenidge, *Procedure* 416.

¹⁰ For some of the trials under the *lex Varia* see Gundel, *RE* 8A. 1.390.

¹¹ During the Italian war, when many were being unjustly condemned under the *lex Varia* for having instigated the war, the Senate, taking advantage of a suspension of legal business, decreed that the courts were not to sit while the Italian insurrection continued. This decree was frequently debated at meetings of the People. (tr.)

may be right to suggest that there was first a suspension of the other courts, and of the Varian later in the war.

The most curious aspect of the *lex Varia* is the condemnation of Varius himself under his own law: "Consequente anno (sc. 89 B.C.) Q. Varius sua lege damnatus excesserat"¹² (Cic. *Brut.* 89.305); "summo cruciatu supplicioque Q. Varius, homo importunissimus, periit"¹³ (Cic. *Nat. Deor.* 3.33); "sed, dum ante pestiferum tribunum plebis quam certum civem agit, sua lex eum domesticis laqueis constrictum absumpsit"¹⁴ (Val. Max. 8.6.4). It is clear that Varius cannot have been condemned for assisting the Italians. The sources suggest that the charge related to the seditious circumstances in which the law had been passed, for his colleagues had interposed their veto, but the *equites* had intervened violently on his behalf.^{14a} It has been urged that at the end of 90 harmony was restored between the factions, when the law of L. Julius Caesar granted citizenship to allies who had remained loyal, and the climate favoured the prosecution of Varius in 89; as the only charge which suggests itself is one of sedition, and as Varius was charged *sua lege*, it is therefore said that the *lex Appuleia* had been incorporated in the *lex Varia*, which was therefore a general law of *maiestas*, possibly with a more exact 'definition' of *maiestas minuta* than the *lex Appuleia*.^{14b}

The difficulty is Valerius Maximus (8.6.4), a passage which appears in a chapter entitled: "Qui quae in aliis vindicant ipsi commiserunt".¹⁵ Even if Varius' law had been couched in general terms, it is clear that Valerius Maximus (8.6.4) is concerned only with that part of it "quae iubebat quaeri quorum dolo malo socii ad arma ire coacti essent".¹⁶ Taken with the title of the chapter, this suggests that Varius was guilty of

¹² Next year (89 B.C.) Q. Varius was condemned and executed under his own law. (tr.)

¹³ Varius, a most troublesome fellow, suffered a terrible death. (tr.)

¹⁴ He was a pernicious tribune before he was a recognized citizen. He was ensnared in our internal divisions and perished under his own law. (tr.)

^{14a} Appian, *B.C.* 1.37. Cf. Val. Max. 8.6.4.

^{14b} Zumpt 2.1.253-5; cf. Badian, *Caepio* 341; Broughton, 2.25.

¹⁵ Those who themselves committed crimes for which they punished others. (tr.)

¹⁶ Which provided for the investigation of those by whose deliberate act the allies had been compelled to take up arms. (tr.)

something concerning the allies—or concerning the issue which had driven the allies to arms, namely Roman citizenship. At this point the doubtful nature of Varius' own citizenship becomes relevant. Scaurus contemptuously suggested that the court would not believe a Spaniard against a *princeps senatus*, and there is also the assertion that the cognomen "Hybrida" was due to "obscurum ius civitatis" (Val. Max. 8.6.4). The accusation against Varius was directly linked to his citizenship, according to Valerius Maximus (8.6.4): "dum ante pestiferum tribunum plebis quam certum civem agit". Gundel (*RE* 8A.1.387) takes this passage to mean that Varius acquired his citizenship in a questionable way; and a clue to the method of acquisition is given by Münzer (*Norbanus* 227-9), who argues that Norbanus was a new citizen who lacked the *ius honorum*. The reward of a successful accuser in this period took a political form, in particular the right to assume the citizenship of a man who had been capitally condemned. Norbanus therefore prosecuted Caepio for Arausio so as to facilitate his own entry into the *cursus honorum*. Although Münzer sees a parallel between the situations of Norbanus and Varius, he does not press it fully. It is perhaps possible to do so on the strength of "dum ante pestiferum tribunum plebis quam certum civem agit", for this was precisely the position of Norbanus as well, and it is therefore not unlikely that Varius' real crime was the abuse of his law for his own purposes.

There is, however, the difficult fact that an actual death sentence was not only imposed on Varius, but was carried out. Levy (15, 18-21) shows that even in the time of Sulla the only capital sentence was still the actual death penalty, although since the mid-second century B.C. there had been a convention whereby an accused was allowed to anticipate condemnation by voluntary exile; if he waited until judgment the responsible magistrate could execute him. From about 123 B.C. this practice hardened into a rule of law, whereby even after condemnation it was the magistrate's duty to allow the accused a reasonable opportunity of avoiding execution by going into exile. Whether he left before or after judgment, an *aquae et ignis interdictio* could be enacted against him, so that if he

returned from exile he could be killed with impunity by the first comer. The effect of the interdict was to recognize that by his change of allegiance he had forfeited his rights of citizenship; the interdict did not impose a sentence of exile, but gave effect to the situation created by the accused's own act.¹⁷

The actual execution of Varius requires the unlikely assumption that, conscience-stricken, he elected not to avail himself of his right of exile. There is, however, another possibility, namely that there was a reason for denying him the right. Levy (27) notes Varius' case in passing as an example of an actual execution, but does not attempt to reconcile this with the right of exile. Lengle (*Straf* 44-45) says that Varius was tried by the *comitia centuriata* and not the *quaestio*, although under his own law. This is an attempt to meet the case of C. Aurelius Cotta, who was *eiectus e civitate* under the *lex Varia* (Cic. *Orat.* 3.11). Does *eiectus* mean voluntary exile, or was it the actual punishment imposed by the *lex*? Levy (22, 31) holds that the sanction of the Varian law was death (but subject to the right of exile), and points out that exile as an actual sentence—known as *aquae et ignis interdictio* in common with the resolution which followed voluntary exile—was unknown until Cicero's *ambitus* law of 63 B.C. Siber (*Analogie* 61) accepts this proposition for permanent commissions, but would postulate the introduction of an actual sentence of exile at an earlier date in the case of special commissions, among which he includes the Varian. But whatever meaning *eiectus* has, why was Cotta exiled and Varius executed? Lengle (loc. cit.) in proposing the *comitia centuriata* as the court which tried Varius, is attempting to capitalize on Mommsen's view (*Straf* 201) that the tendency to restrict the death penalty was more marked in the *quaestiones* than in the *comitia*; Lengle's argument is that if Varius was tried in the *comitia* there was nothing to prevent the imposition of the actual death sentence. But in fact there was no difference between a *quaestio* and the *comitia* as far as the right of exile was concerned (Levy, 27-9).

¹⁷ Cf. Mommsen, *Straf* 68-70; Greenidge, *Procedure* 513; Strachan-Davidson, (2. 24, 28-41, 52-72), who aptly calls the interdict "a conditional death sentence"; Siber, *Analogie* 55, 57-9.

It follows that even if Varius had been tried by the *comitia centuriata* the problem would remain, for he would have had a right of exile whether the death sentence flowed¹⁸ from the judgment of a *quaestio* or was imposed by the *comitia*. Only one circumstance can have deprived Varius of that right—the fact that he was not a citizen. This, it is suggested, is the explanation of his execution. Citizenship was the basic issue in respect of which the Italians had received *opes consiliumve*, and having regard to the doubtful quality of Varius' citizenship, and the possibility that his trial was connected with it, it may be supposed that the *lex Varia* included a provision whereby those who acquired citizenship *dolo malo* could be deprived of it. It is therefore suggested that to convict Varius at all it had to be shown that he had become a citizen by fraud. Consequently, his very condemnation annulled his citizenship, and as a peregrine he was exposed to summary execution.

Some authorities¹⁹ believe that the *lex Varia* created a permanent *quaestio*, while others²⁰ favour a special commission. The acceptance of a special commission would partly resolve the difficult sequence in Asconius 22C, for Varius may have been appointed the presiding quaesitor (Mommsen, *Straf* 198.2). But this would still not explain why Scaurus addressed the court as *Quirites*. Lengle's belief that Varius was tried by the *comitia*, although under his own law, is difficult, for it would have to be assumed that the *lex* had not submitted a category of acts to the exclusive jurisdiction of the *quaestio*. Henderson (76) believes that a *lex* either defined crimes or regulated procedure, but did not do both. It would follow that the *lex Varia* laid down a *maiestas* category, but did not

¹⁸ A *quaestio* did not pass sentence. The penalty had been laid down by the enabling statute, and the court simply had to answer a specific question: "Did the accused do what is alleged?". If the answer were affirmative the praetor pronounced *fecisse videtur* and the penalty followed by operation of law. This is why there was no *provocatio* from a *quaestio*. The People, by enacting the *lex*, had already conditionally sentenced the accused. The condition was fulfilled when the *quaestio's* answer was *condemno*. Strachan-Davidson, 2.43-50; cf. Levy, 16-17; Daube, 73-74.

¹⁹ Zumpt, 2.1.253-5; Greenidge, *Procedure* 385; Gundel, *RE* 8A. 1.385.

²⁰ Mommsen, *Straf* 198; Strachan-Davidson, 2.21; Lengle, *Straf* 30; Kübler, 547; Siber, *Analogie* 61.

concern itself with the establishment of a court. This would mean that it was open to the *comitia centuriata* to apply the Varian law. But Henderson's theory of a clearcut distinction does not seem to be justified. The *equites* had actively helped Varius to push his law through (Appian, *B.C.* 1.37), and their reward was surely a monopoly of the jury panel and exclusive jurisdiction over the substantive category. It should also be noticed that the *lex Varia* seems to have been amended procedurally without affecting its substantive provisions; for when Cn. Pompeius was tried in 89 the charge was one of *maiestas lege Varia*, but the court was a mixed panel of senators and *equites* under the *lex Plautia* (or *Plotia*) of that year: "Memoria teneo, cum primum senatores cum equitibus Romanis lege Plotia iudicarent, hominem dis ac nobilitati perinvisum Cn. Pompeium causam lege Varia de maiestate dixisse"²¹ (Cic. *ap. Ascon.* 79C). The survival of the Varian law, despite a re-alignment of the jury panel, is perhaps the strongest argument in favour of its permanence.²²

B. LEX CORNELIA MAIESTATIS

Sulla's *lex Cornelia maiestatis* was passed in 81 B.C. as part of his programme of criminal legislation, setting up certain new permanent courts and reshaping others, although it is not certain which were new, and which were simply remodelled by Sulla. In the case of *maiestas* the scope of Sulla's law depends on whether a permanent *quaestio* was already in existence as a result of the *lex Appuleia* or the *lex Varia*.

²¹ I recall that when senators first sat with Roman knights under the *lex Plotia* a charge was brought under the *lex Varia de maiestate* against Cn. Pompeius, a man most hateful to the gods and the nobility. (tr.)

²² Cicero (*ap. Ascon.* 79C) may be corrupt. Cn. Pompeius Strabo was consul in 89 and proconsul in 88 (Broughton, 2.32, 42), and as he could not be tried while holding either office, there does not seem to have been time to try him in either year. But the trial must have been in 89, for it was the first under the Plautian law, and M. Plautius Silvanus was tribune that year (Broughton, 2.34). Greenidge and Clay (151) suggest "Cn. Pomponius", tribune in 90. This is possible, for he and Varius "habitabant in rostris" (Cic. *Brut.* 89.305)—which would certainly have made him *nobilitati perinvisum*.

The evidence for a permanent court *lege Appuleia* is very strong, and the probabilities somewhat favour a similar position for the *lex Varia*. It is therefore believed that the first permanent *quaestio maiestatis* should not be credited to Sulla, who should rather be regarded as having introduced innovations in a permanent court which already existed.²³

It has been said that the *lex Cornelia* was a 'general' law of *maiestas*, covering the whole of the crime and specifying every possible case.²⁴ It has also been said that there was a process of restatement, whereby Varius re-enacted Saturninus' law with additions of his own, and Sulla in turn incorporated the Appuleian and Varian provisions, at the same time adding a large number of new categories;²⁵ similarly the *lex Julia maiestatis* is supposed to have re-enacted the *lex Cornelia*.²⁶ But the evidence does not entirely support this perpetual game of leap-frog. The *lex Acilia* of 123-2 B.C., which was preceded by two other *leges de repetundis*, the *lex Calpurnia* of 149 B.C. and the *lex Junia* of uncertain date, has a significant provision: "Quibusquom iudicium fuit fueritve ex lege quam L. Calpurnius L. f. tr. pl. rogavit, exve lege quam M. Iunius D. f. tr. pl. rogavit, quei eorum eo iudicio apsolutus vel condemnatus est eritve, quo magis de ea re eius nomen hace lege deferatur quove magis de ea re quom eo ex h.l. agatur, eius h.l. nihilum rogato".²⁷ It seems clear from "fueritve" and "eritve" that the earlier laws were still in force. Gaius (4.19) says: "legis actio constituta est per legem Siliam et Calpurniam, lege quidem

²³ So Zumpt, 2.1.377-8; Lengle, *Straf* 28-29. Cf. the authorities who accept a permanent court *lege Appuleia* (p.45 n.39) and *lege Varia* (p.67 n.19). For the view that Sulla established the first permanent *quaestio maiestatis* see Mommsen, *Straf* 203; Kübler, 509.

²⁴ Greenidge, *Treason* 232. Cf. Zumpt, 2.1.378; Kübler, 547f.; H. Last, *CAH* 9.296f.; Brecht, *Maiestas* 357; Botsford, 419 and n.11; Rotondi, 360; Pollack, 191ff.

²⁵ Zumpt, 2.1.253ff. Cf. Bonner, 109.

²⁶ Greenidge, *Treason* 232.

²⁷ If any person has been or shall be tried under the *lex Calpurnia* or the *lex Junia*, and if he has been or shall be acquitted or convicted at such trial, it is not intended by this law that he be further summoned under this law or that there be further proceedings against him under this law in respect of such matter. (tr.) Warmington, 364f.; cf. ib. 332f.

Silia certae pecuniae, lege vero Calpurnia de omni certa re".²⁸ This *lex Calpurnia* is possibly the extortion law of 149 B.C.,²⁹ while the *lex Silia* was slightly earlier; the Calpurnian law stated in the general form *de omni certa re* the rule which the Silian had applied to *certa pecunia*, but Gaius in no way suggests that the latter was no longer current. Gaius (1.185) cites a *lex Julia et Titia* dealing with *tutela*, and the reference is probably to two separate laws, both of which survived (Jolowicz, 249.3). Diocletian decreed that "maximi enim criminis est retractare quae semel ab antiquis statuta et definita suum statum et cursum tenent ac possident".³⁰ Finally there is the fact that when it came to the extensive interpretation of a *lex* it was accepted that later legislation could be used for the interpretation of earlier laws.³¹ These examples therefore support the view that the Roman practice was opposed to the introduction of consolidating statutes, and tended rather to retain an earlier *lex* even when a later one on the same subject was introduced;³² and it is in the light of this principle that the *lex Cornelia* should be approached.

On what evidence is it asserted that Sulla introduced a 'general' *maiestas* law? He certainly regulated the activities of provincial governors, and may have done so extensively (pp. 75ff.), but this by no means implies an all-embracing code. It might conceivably be argued that by 'killing' the tribunate and condemning the *comitia tributa* to idleness³³ Sulla inhibited the *Rechenschaftsprozess* entirely, at least as far as the tribal assembly was concerned. Indeed something like this is attested.³⁴ He will therefore have needed a comprehensive *maiestas* law, so as to bring the whole of the *maiestas* fragment of the *Rechen-*

²⁸ An action-at-law has been established by the *lex Silia* and the *lex Calpurnia*: an ascertained sum is claimable under the *lex Silia*, and any ascertainable thing under the *lex Calpurnia*. (tr.)

²⁹ So Mommsen, *Straf* 708. Contra Strachan-Davidson, 2.5f.; Hitzig, 7; Henderson, 73.19. Even if it was not the same law, the point here made is not affected.

³⁰ It is a most serious offence to tamper with anything which, having been established and defined by the ancients, has become settled law. (tr.) *Coll.* 15.3.2. There are also examples going the other way. Thus Cicero *Rab. Post.* 4.9. See also the cases of translation cited by Henderson, 76 and n.34.

³¹ *Dig.* 1.3.28. The converse also applied. *Dig.* 1.3.26f.

schaftsprozess under the *quaestio*. But it is clear that in fact this did not happen, for the retention of a substantial part of the *maiestas* fragment outside the scope of the *quaestio* is a necessary inference in the light of Cicero's assertion that the suppression of the tribunes' jurisdiction left a gap in the administration of criminal justice.³⁵ And what is of particular significance is the fact that, with one possible exception, the sources do not attest the prosecution *lege Cornelia* of anything previously covered by the categories of Saturninus or Varius. The (possibly) exceptional case is that of C. Cornelius, who as tribune in 67 B.C. proposed that the power to grant dispensation from the laws be taken away from the Senate and confined to the People (Ascon. 57C). The tribune P. Servilius Globulus interceded when the herald was about to read out Cornelius' bill, whereupon Cornelius promptly read it out himself. The consul C. Piso protested, there was a violent scene, and Cornelius closed the meeting (ib., 58C).

In 66 B.C. Cornelius was charged under the *lex Cornelia*

³² Cf. Schulz, *Principles* 84-6: "Never did the Romans attempt to interrupt the even flow of legal development by radical change. . . . There was a disinclination to abolish any valid law, rather was it allowed to lapse through disuse; a new rule was often set up side by side with one antiquated or moribund, to be used at choice, so that in this way the disuse of the older law was accomplished gradually. . . . It cannot be denied that this conservatism . . . was responsible . . . for unwieldiness and intricacy in the legal system: if a decision to clear up and cast out is never taken, it is clear that finally we have legal rules and legal institutions derived from the most various periods of development existing side by side or mixed up with each other in a strange and confusing way. The fundamentally conservative attitude just described was maintained with astonishing consistency throughout Roman legal history. It dominated the subjects of the Republic, of the Principate, and of the later imperial era." Cf. the assertion of McFayden (201) that "the Romans were as disinclined to make or repeal statutes as we Americans are inclined the other way. The result was that the statute law was always failing to keep up with advancing social needs and ideas."

³³ H. Last, *CAH* 9.292, 208.

³⁴ *Schol. Gron.* p.326St.: "Decem tribuni eligeantur antea, qui quasi tuerentur populi Romani maiestatem. . . . Hos omnes pro nobilitate faciens sustulit Sulla." (Previously ten tribunes were elected, to protect, as it were, the *maiestas* of the Roman People. Sulla, acting in the interests of the nobility, abolished them.)

³⁵ Cic. *Div. in Caec.* 3.8: "Iudiciorum desiderio tribunicia potestas efflagitata est."

maiestatis. The praetor P. Cassius did not appear on the appointed day, and the accusers, P. and C. Cominius, were threatened by a hostile crowd and barely managed to escape under cover of darkness, making their exit from the city over the rooftops (Ascon. 59-60C). The case was dropped, but was taken up again the following year. P. Cominius, who was anxious to refute the belief that money had secured the abandonment of the previous action, again prosecuted Cornelius under the *lex maiestatis* (ib., 60C). Leading senators gave evidence and tried to persuade the court that Cornelius was guilty of *crimen imminutae maiestatis tribuniciae*.³⁶ This submission had something to do with the brushing aside by Cornelius of Globulus' intercession (Ascon. 60-1C). Cicero, defending Cornelius, admitted the facts but argued the law:³⁷ "non ideo quod lectus sit codex a tribuno imminutam esse tribuniciam potestatem" (Ascon. 61C). Cornelius was acquitted.³⁸ Asconius (62C, although the passage is bracketed by Clark), concludes his account of the trial with an analysis reminiscent of the development of the issues at the trials of Norbanus and Caepio: "In hac causa tres sunt quaestiones: prima, cum sit Cornelius reus maiestatis legis Corneliae, utrum certae aliquae res sint ea lege comprehensae quibus solis reus maiestatis teneatur, quod patronus defendit; an libera eius interpretatio iudici (*sic*) relicta sit, quod accusator proponit. Secunda est an quod Cornelius fecit nomine³⁹ maiestatis teneatur. Tertia an minuendae maiestatis animum habuerit."⁴⁰ Asconius here raises the question of the extensive interpretation of the *lex*, that is, its application to a case for which it did not make express provision, but which could be held to have been within the contemplation of the legislator.⁴¹

³⁶ Ascon. 61C. For the connection between this passage and Mommsen's theory as to the origin of the *crimen maiestatis* see p. 221. Quintilian simply attests an allegation that Cornelius *maiestatem minuit*. *Inst. Orat.* 4.5.8; cf. 7.3.35; 10.5.13.

³⁷ Cf. M. Antonius for Norbanus. Cf. also Sen. *Controv.* 9.25.13: "Reus enim qui tueri se facto non potest, ad ius confugit et dicit hac se lege non teneri." (An accused who has no defence on the facts takes refuge in the law and argues that he is not bound by the *maiestas* law.)

³⁸ Ascon. 61C; Cic. *Vat.* 5; Quint. *Inst. Orat.* 6.5.10.

³⁹ *ne ca* codd: *nomine* Purser (Clark, 62).

If the charge against Cornelius turned on his disregard of the veto, it should be asked why any extensive interpretation was necessary. The *lex Appuleia* had made provision for such conduct (p. 54), and if it had not been repealed it would still have furnished the necessary express term on which to base the charge. If, on the other hand, it had been re-enacted by Sulla, there is no reason why an express term of the *lex Cornelia* should not have been available. It is true that some of the evidence suggests that Cicero was attempting to meet an allegation of disregard of the veto. He relied, for example, on the fact that Cornelius had closed the meeting (Cic. *Vat.* 5), but it is clear from Asconius (58C) that this was not done when Globulus interceded, but only as a result of the violent disturbance which followed the intercession. Cicero similarly relied on (very) special pleading when he made the point that Cornelius had not read out the bill in order to put it to the vote, but merely in order to refresh his memory (Cic. *Vat.* 5). No question of interpretation would have arisen if it had simply been a matter of deciding whether on these facts there had been a breach of the express rule prohibiting disregard of the veto. The uncertain

⁴⁰ There are three questions in this case: Firstly, whether the *lex Cornelia*, under which Cornelius was charged with *maiestas*, limits the liability of the accused to certain specified matters, as defending counsel contended; or whether the court has the power of free interpretation, as the prosecutor submitted. Secondly, whether Cornelius' act fell under the heading of *maiestas*. Thirdly, whether he intended to diminish *maiestas*. (tr.)

⁴¹ Even if the Republican principles of extensive interpretation are not well known (Schulz, *Legal Science* 77), some conclusions are possible. If one of the objectives of *iudicia publica* was the substitution of precise statutes for the discretionary jurisdiction of the assembly (Rein, 63f.), and if the imperial *cognito extraordinaria* was designed to furnish greater freedom of interpretation (ib., 68; cf. Schulz, *o.c.* 132), it may seem that the Late Republic was the period least receptive to interpretation. (For examples of rigidity see Schulz, *o.c.* 30, 77.) But criminal *leges* were capable of considerable interpretation in the classical period (*Dig.* 48.8.10, 9.3, 10.1.13), and this included the *lex maiestatis* (*Dig.* 48.4.7.3). For the general principles of interpretation see *Dig.* 1.3.10ff. Similar principles were recognized in the early Principate. Quint. *Inst. Orat.* 7.8.7; *Declam.* 331. Asconius' *libera interpretatio* suggests at least something of the same kind in the Late Republic, and Cicero certainly knew a great deal about the subject. Cic. *Caec.* 51ff.; *Invent.* 1.17; 2.127ff.; *Top.* 25. Indeed it would be surprising if Roman court practitioners, trained as they were in rhetoric, had not been well versed in the doctrines of interpretation.

point of law is rather to be derived from Asconius' assertion that the senators who testified against Cornelius criticized his personal reading of the bill as something unprecedented.⁴² If this was the gravamen of the charge it can readily be seen why interpretation was necessary, for the accuser attempted to put his case on a basis quite different from disregard of the veto: he argued that a tribune who read out a bill himself acted in a manner inappropriate to his office, regardless of whether or not this was done in the context of a colleague's intercession. That this was the submission seems to follow from Cicero's counter-argument that the reading of a bill by a tribune had not diminished *tribunicia potestas* (Ascon. 61C), and indeed in Asconius' account (loc. cit.) the defence case was confined to this legal argument.⁴³ It is suggested that the *potestas* here referred to was not that of Globulus, but of Cornelius himself, and indeed this seems to be a necessary inference in the light of Quintilian's assertion that Cornelius' diminution of *maiestas* arose from the fact that, *being a tribune*, he personally read out the bill.⁴⁴

If the allegation against Cornelius was that he had acted in a manner inappropriate to his tribunician office, there was clearly nothing in the *lex Appuleia* on which an analogy could have been based. But according to Asconius this might conceivably have been interpreted into the *lex Cornelia* as a case of *imminuta maiestas tribunicia*. This at first sight implies that

⁴² Ascon 60-1C: "Vidisse se cum Cornelius in tribunatu codicem pro rostris ipse recitaret, quod ante Cornelium nemo fecisse existimaretur. Volebant videri se iudicare eam rem magnopere ad crimen imminutae maiestatis tribuniciae pertinere; etenim prope tollebatur intercessio, si id tribunis permetteretur." (They said that they had been present when Cornelius, while a tribune, had himself read out the bill from the dais, which no one was believed to have done previously. They wished to make it clear that they regarded this as an example of the crime of diminishing tribunician *maiestas*; for the right of intercession would be virtually destroyed if this were permitted to tribunes.)

⁴³ "Non poterat negare id factum esse Cicero, is eo confugit ut diceret non ideo quod lectus sit codex a tribuno imminutam esse tribuniciam potestatem." (Cicero, being unable to deny the facts, took refuge in the law and argued that this did not mean that the reading of the bill by Cornelius had diminished tribunician power.) Cf. Sen. *Controv.* 9.25.13 (n.37).

⁴⁴ Quint. *Inst. Orat.* 4.4.8: "maiestatem minuit C. Cornelius; nam codicem tribunus pl. ipse pro contione legit." Cf. n.42.

the *lex* said something about tribunician *maiestas*, but it can be asserted with some confidence that the expression *maiestas tribunicia*, which is not attested for any other *maiestas* law, is least likely of all to have occurred in a law of Sulla. Asconius is therefore not to be accepted at face value, if his meaning is that this expression was included in the *lex Cornelia*. But it is by no means certain that this is what he does mean, in the light of Cicero's careful "non imminutam esse tribuniciam potestatem" (Ascon. 61C). A tribune, as the holder of *potestas* granted by the People, and therefore as the possessor of derivative *maiestas*, had diminished *maiestas populi Romani*; and no more need be read into Asconius than this.⁴⁵ There is therefore no reason to doubt that, as in the case of the *lex Appuleia*, the only criterion laid down by the *lex Cornelia* was *quo maiestas populi Romani minueretur*.⁴⁶

There remains, however, the question of the factual basis on which it was sought to rest the interpretation. In other words, what category of wrongful acts was there in Sulla's law, by analogy with which it could be urged that the conduct of Cornelius fell under the *lex*? Before considering this question it will be convenient to discuss the one Sullan category about which there is no doubt, namely that enumerated by Cicero: "Mitto exire de provincia, educere exercitum, bellum sua sponte gerere, in regnum iniussu populi Romani aut senatus accedere, quae cum plurimae leges veteres, tum lex Cornelia maiestatis, Iulia de pecuniis repetundis planissime vetat".⁴⁷ The rules here enunciated were not new, for matters of this kind had long fallen under the *Rechtschaftsprozess* (pp. 21-3), nor was there any lack of recent examples to emphasize the critical state of the problem. Thus in 89 B.C. M'. Aquillius, acting on his own initiative, incited the kings of Bithynia and Cappadocia to attack Mithridates, thereby involving Rome in a war in the East at a time when the Italian issue was still unresolved; and

⁴⁵ For other criticisms of this passage in Asconius see p. 221.

⁴⁶ Cf. Pollack, 196; Gundel, 298.

⁴⁷ I pass over departing from a province or leading an army out of it, waging war of one's own accord, or entering foreign territory without the authority of the Roman People or the Senate. These things are absolutely forbidden, not only by a number of ancient laws, but also by the *lex Cornelia maiestatis* and the *lex Julia de pecuniis repetundis*. (tr.) Cic. *Pis.* 21.50.

in 83 B.C. L. Licinius Murena invaded Pontus without authority and suffered a reverse.⁴⁸ It is clear that it was precisely in this area that it was imperative for Sulla, having inhibited the *maiestas* fragment of the *Rechenschaftsprozess*, to devise a substitute safeguard for his constitution. For if this constitution was designed to convert the customary authority of the Senate into positive law,⁴⁹ and if the particular sphere of senatorial activity with which Sulla was concerned was the regulation of relations between the Senate and military commanders abroad,⁵⁰ then he was undoubtedly obliged to submit matters such as these to the *quaestio maiestatis*, as the only alternative to the *comitia tributa*.

The operation of Sulla's law may be illustrated by the trial of A. Gabinus. In 54 B.C. Gabinus, acting on Pompey's instructions (and fortified by Ptolemy's gold), left his province of Syria and went to Egypt, where he restored Ptolemy to his throne (Dio, 39.55). It would seem that Gabinus thereby breached both Sulla's law and a specific resolution of the Assembly.⁵¹ Crassus sent a legate to take over Gabinus' command, but οὐκ ἐδέξατο, ἀλλ' ὥσπερ ἀθάνατον τὴν ἡγεμονίαν εἰληφώς, κατείχεεν αὐτήν⁵² (Dio, 39.60). On his return to Rome Gabinus was tried for *maiestas*. Pompey intervened to save him from certain condemnation, whereupon an enraged mob nearly murdered Gabinus and the jury.⁵³ Dio (39.62)

⁴⁸ Cobban, 159; Broughton, 2.35f., 43, 64.

⁴⁹ Marsh-Scullard, 130. Cf. H. Last, *CAH* 9.298; Fröhlich, *RE* 4.1560.

⁵⁰ H. Last, *CAH* 9.293-8. For a recent discussion of Sulla's organization of provincial commands see Carney, 73.

⁵¹ Dio, 39.56: ἐπὶ τὴν Αἴγυπτον ἡτείχθη, καίπερ ἀπαγορεύοντος μὲν τοῦ νόμου μήτε ἐς τὴν ὑπερορίαν τοὺς ἀρχοντάς τινων ἀποδημεῖν μήτε πολέμους ἀφ' ἑαυτῶν ἀναιρεῖσθαι, ἀπειρηκότος δὲ καὶ τοῦ δήμου . . . μὴ καταθῆναι τὸν ἄνδρα. (He went to Egypt, although the law forbade a commander to leave his province or make war of his own accord, and although the People had forbidden the restoration of Ptolemy.)

⁵² He refused, and clung to his command as if he held it in perpetuity. (tr.)

⁵³ Cic. *Quint. Frat.* 3.1.15; 3.1.24; 3.2.1. Dio, 39.62. According to the melodramatic version of Valerius Maximus, 8.1. abs. 3, Gabinus was saved by the tearful intervention of his son, which seems to have been a stock theme (cf. the trial of Ser. Galba, p. 23). Pompey's attitude is in marked contrast to that of the emperor Tiberius, who would not allow Cn. Piso to disclose secret instructions. Piso's crime was leaving his province (also Syria) and attempting to return by force (Tac. *Ann.* 3.14, 16).

says that Cicero was Gabinius' accuser, but Cicero himself denies that he played any part in the trial except that of a witness (*Quint. Frat.* 3.9.1). Yet he was plainly disgusted at the narrow acquittal—38 votes to 32 (*Att.* 4.18; cf. *Quint. Frat.* 3.9.1). Gabinius was then tried for extortion. Cicero defended him, but he was condemned and fined 10,000 talents, and went into exile. Dio (39.55) ironically remarks that this astonished Gabinius; money had secured his acquittal of *maiestas*, but money brought about his conviction for extortion.

The trial of Gabinius for *maiestas* had a curious sequel. An hour after his acquittal his freedman, Antiochus Gabinius, was condemned under the *lex Papia*: "Itaque dixit statim resp. lege maiestatis ΟΥΚΟΙΜΠΙΚΑΜΑΦΙΗΙ" (*Cic. Att.* 4.18). It is regrettable that the Greek crux has not been resolved, for the linking of the *lex Papia* and the *lex maiestatis* is intriguing. The *lex Papia* of 65 B.C. was introduced in order to restrain the illegal assumption of Roman citizenship, by expelling from Rome all peregrines who resided outside Italy (Broughton, 2.158). Having regard to the fact that citizenship was linked to *maiestas* in the *lex Varia* (pp. 65-67), it is permissible to speculate on the possibility that the *lex Papia* may be identifiable as another *lex maiestatis*. In this regard it should be noticed that the identification of a law as a *lex maiestatis* can depend on an accident. It is only the chance circumstance that Cicero (*ap. Ascon.* 79C) happens to mention that the trial of Cn. Pompeius was judged by jurors appointed *lege Plotia*, but on a cause *lege Varia de maiestate*, that enables the *lex Varia* to be identified as a *maiestas* law, for the sources dealing with the introduction of the law and its application in 90 B.C. are silent as to its nature. It may be that the *lex Mamilia*, which dealt with a similar category of *maiestas* to the *lex Varia* (external relations), has been excluded from the *leges maiestatis* only by the lack of a similar accident (cf. p. 37). But the possibility that the *lex Papia* was a *maiestas* law is lessened if the reconstruction and interpretation of the Greek in Cicero *Att.* 4.18 which is proposed by Shuckburgh (326.1) is accepted: οὐ σοί κεν ἄρ' ἴσα μ' ἀφίη. Shuckburgh's point is that Gabinius Antiochus was tried under the *lex Papia* for a contravention of the provision *ne quis peregrinus se pro cive gereret*. When Antiochus said "the Republic will not acquit

me under the *maiestas* law as it did you", he meant that he was really condemned in place of Gabinius, perhaps in order to pacify the angry mob, and that therefore he was virtually convicted of *maiestas* in place of his patron. On the other hand, the particular provision of the *lex Varia* under which Varius was condemned to death amounted, in effect, to a rule *ne quis peregrinus se pro cive gereret*, and the *lex Varia* was certainly a *lex maiestatis*.

It is relevant to consider which *quaestio* convicted Antiochus. Public criminal courts were divided into *quaestiones perpetuae* and *quaestiones extraordinariae*.⁵⁴ A special court differed from a permanent one in that it was an *ad hoc* measure introduced to meet a situation which was not expected to recur, such as Pompey's *lex de vi* of 52 B.C. (Mommsen, *Straf* 199 and n.2), and which therefore did not lay down rules of general application for the future. If it is borne in mind that the total number of *quaestiones perpetuae* established in the last century of the Republic and the Principate of Augustus did not exceed eleven (Mommsen, *Straf* 203-4), the question arises as to what happened when other laws created criminal offences of a permanent nature. As no further *quaestiones perpetuae* can be assumed, the only alternative is to suppose that in all such cases jurisdiction was given to one or other of the existing permanent courts. This is precisely what happened in the case of *illicita collegia*: "quisquis illicitum collegium usurpaverit, ea poena tenetur, qua tenentur qui hominibus armatis loca publica vel templa occupasse iudicati sunt"⁵⁵ (*Dig.* 47.22.2). If this is compared with the *maiestas* category "quo (sc. armatis hominibus) loca occupentur vel templa"⁵⁶ (*Dig.* 48.4.1.1), it will be seen that the penalty for *illicita collegia* was the penalty for *maiestas*. But the penalty for a crime was imposed by operation of law (p. 67 n.18). Therefore in order to be bound by the penalty for *maiestas* the crime had to be tried by the *quaestio maiestatis*. The case of *illicita collegia* is particularly relevant to the trial of Antiochus, for in 54 B.C. C. Alfius

⁵⁴ Mommsen, *Straf* 193.3, 196.1 prefers *cotidianae* to *extraordinariae*.

⁵⁵ Whoever sets up an unlawful corporation is bound by the same penalty as those who are held to have occupied public places or temples by force of arms. (tr.)

⁵⁶ Under which public places or temples are occupied (by force of arms). (tr.)

Flavius was *quaesitor de sodaliciis* at the trial of Plancius, and *quaesitor de maiestate* at the trial of A. Gabinus.⁵⁷ It is not impossible that the *lex Papia* conferred jurisdiction on the *quaestio maiestatis*, and that when Antiochus Gabinus said that he would be condemned *lege maiestatis* he was being accurate rather than subtle.

There were probably other provisions in Sulla's 'proconsular' category. A governor who failed to quit his province within thirty days of his successor's arrival, or permitted his legates excessive expenditure, was probably guilty of *maiestas*.⁵⁸ It may also have been *maiestas* for Appius Claudius to leave for his province without having his command confirmed by a *lex curiata*,⁵⁹ and there were no doubt other provisions, such as failure to depart timeously for a province, a rule which seems to have originated early.⁶⁰ The scope of the category is illustrated by Cicero's denunciations of Verres. When Verres failed to exact retribution from the people of Lampsacus for their seditious diminution of his *ius legationis*, his failure to uphold the dignity of his office was *maiestas*.⁶¹ Verres' remission of the Mamertine obligation to furnish a warship was *maiestas*, and here Cicero gives a clear exposition of *maiestas* in its external connotations: "Minuisti maiestatem rei publicae, minuisti auxilia populi Romani, minuisti copias maiorum

⁵⁷ Cic. *Planc.* 17.43, 42.104; *Quint. Frat.* 3.1.24; 3.3.3. Mommsen (*Staat* 2.201.4) holds that Alfius was not a praetor, but a special quaesitor. But Greenidge (*Procedure* 430 and n.2) argues that 'quaesitor' was a generic title, and that the office could have fallen within a praetor's sphere of competence, a view which Broughton (2.227.3) supports with the observation that Alfius had power to issue edicts, and had previously stood for the praetorship in 56 B.C. (cf. Pocock, 128-9).

⁵⁸ Cic. *Fam.* 3.6.3; 3.10.6. Cf. Zumpt, 2.1.385; Mommsen, *Straf* 558; Broughton, 2.75.

⁵⁹ Cic. *Fam.* 1.9.25. Cf. Zumpt, 2.1.386f.; Broughton, 2.75.

⁶⁰ Livy 42.21.4: "tribuni plebis . . . consulibus multam se dicturos, nisi in provinciam exissent, denuntiarunt." (The tribunes threatened to fine the consuls unless they left for their provinces.) Cf. Mommsen, *Straf* 557. Balsdon (*Provinces* 63, 65) believes that a consul could choose his own departure date.

⁶¹ Cic. *Verr.* 2.1.84. Cf. Ps-Ascon. ad loc.: "qui potestatem suam in administrando non defenderit, imminuti magistratus veluti maiestatis laesae reus est." (Whoever does not maintain his power of administration is guilty of diminishing his magistracy, just as if he had injured *maiestas*.)

virtute ac sapientia comparatas, sustulisti ius imperii, condicionem sociorum, memoriam foederis.”⁶² This striking illustration of the link between *maiestas* treaties and the *crimen maiestatis* is repeated in the allegation that it was *maiestas* to force Tyndaris to surrender a statue: “est (sc. crimen) maiestatis, quod imperii nostri, gloriae, rerum gestarum monumenta evertere atque asportare ausus est.” Verres’ execution of the captains whose ships had been seized by pirates was not murder, because they were peregrines; but it was a breach of his official duty, and his crime was *maiestas*.⁶³

It is not difficult to assign these cases to the ‘proconsular’ category, either as express provisions or by way of interpretation. The same can probably be said of Staienus the quaestor, who was guilty of *maiestas* when he incited sedition in the army;^{63a} for *sedition* must here mean ‘military insubordination’, and is therefore not to be equated with the use of the same word in the *lex Appuleia*,⁶⁴ and in any case the substance of Staienus’ offence was his abuse of his official (and ‘proconsular’) position. But it has to be asked whether any cases outside the ‘proconsular’ area are necessarily assignable to the *lex Cornelia*. Verres’ grant of safe custody to the pirate captains after his return to Rome was admittedly *maiestas*;^{64a} but it was not difficult to extend his ‘proconsular’ obligations to something done by him in a private capacity immediately after giving up his office, and arising out of that office. The borderline case is perhaps that of the man who, under the name of “Bulbus”, was convicted of *maiestas*, and who is probably the “M. Atilius”

⁶² You have diminished the *maiestas* of the State and the military power of the Roman People; you have diminished the resources acquired by the merit and wisdom of our ancestors; you have destroyed the authority of the empire, the situation of our allies, the records of our treaties. (tr.)

⁶³ Cic. *Verr.* 2.5.50, 4.88, 5.133. Cf. Mommsen, *Straf* 79.1; Siber, *Analogie* 34.

^{63a} Cic. *Cluent.* 99: “plane factum est maxime eius opera . . . in exercitu seditionem esse conflam.” (It was made clear that he was mainly responsible for inciting military insubordination.)

⁶⁴ Livy (3.53.4) attests a very early rule: “ne cui fraudi esset concisse milites aut plebem.” (Let no one be guilty of stirring up the army or the plebs.) But the coupling of *milites aut plebem* in the subsequent *lex Appuleia* is inconceivable, and in any event the two categories are quite separate in the legal texts (*Dig.* 48.4.1.1).

^{64a} Cic. *Verr.* 2.1.12; cf. *Dig.* 48.4.3.

to whom Cicero refers in his discussion of judicial corruption.⁶⁵ The *maiestas* charge against him was based on the allegation that he had tampered with a legion in Illyricum: "legionem esse ab eo sollicitatam in Illyrico . . . planum factum est" (Cic. *Cluent.* 97); this was a clear case under the *maiestas* law: "quod crimen erat proprium illius quaestionis (sc. maiestatis), et quae res lege maiestatis tenebatur"^{65a} (ib.). Thus far there is no difficulty, for Atilius' offence was committed *militiae*. But notice must be taken of Cicero's assertion (*Verr.* 1.39) that in the case of the M. Atilius who was condemned for *maiestas* it was established that he had taken a bribe as a *iudex*. At first sight this may seem to imply that judicial corruption was the basis of at least one of the *maiestas* charges, but this cannot be correct. For Staienus, who incited the army in breach of the *lex maiestatis*, was also thought to have been involved in bribery; but Cicero says quite specifically that this could not be brought home to him under the *maiestas* law: "Causam nusquam Staienus ea de re lege dixit. Proprium crimen illud quaestionis eius non fuit."⁶⁶ Of equal significance is the fact that Cicero couples Atilius with Herennius and Popilius (who were condemned for *peculatus*, not for *maiestas*) and, speaking in passing, says of all three: "hoc planum factum est, eos pecuniam ob rem iudicandam accepisse."^{66a} Finally, the juristic texts on the *lex maiestatis* (p. 266) do not attest judicial corruption as a form of the *crimen maiestatis*.

Seneca Rhetor (*Controv.* 9.25.13ff.) formulates certain pro-

⁶⁵ Cic. *Cluent.* 97; *Verr.* 1.39. For the identification of this man as M. Atilius Bulbus, a senator in 74 B.C., see Broughton, 2.488.

^{65a} The *maiestas* court had jurisdiction, and the facts fell under the *maiestas* law. (tr.)

⁶⁶ Staienus never stood trial in respect of his involvement in bribery, for that did not fall under the jurisdiction of the *maiestas* court. (tr.) Cic. *Cluent.* 103. The words "causam" and "ea de re" are conjectural (Madvig), but the general sense, i.e. that he was not tried, is clear. In the context (*Cluent.* 99-103) the offence for which he was not tried can only have been bribery. As "proprium . . . fuit" is not suspect, Cicero's assertion is that a charge of bribery was not appropriate to a certain *quaestio*. And the only *quaestio* which Cicero attests as having been concerned with Staienus is the *quaestio maiestatis*.

^{66a} It was made clear that they had been bribed in their judicial capacities. (tr.) Cic. *Verr.* 1.39.

positions, the substance of which is as follows: A magistrate who commits a crime is not always liable *lege maiestatis*, but only when he acts under *auctoritas publica* or *publica maiestas*. Therefore if he commits adultery he falls under the adultery law; but if he imposes punishment when there is no accuser he is liable for *maiestas*. The passage does not quite attest the corollary of this, namely that the *lex maiestatis* was restricted to acts performed in an official capacity (cf. p. 87), and indeed it is asserted that a private citizen is liable if he injures *maiestas populi Romani* (9.25.13); but this is only noticed in passing, and the main weight of the discussion falls on magistrates. The moral implications of *maiestas* are also examined, and it is asserted that a magistrate may be liable for something which a private citizen can quite lawfully do: "Lex (sc. maiestatis) quid oporteat quaerit, aliae quid liceat."⁶⁷ It is, for example, lawful to visit a brothel, but if a praetor does so in an official capacity he injures *maiestas*; it is also lawful to wear such clothes as one deems fit, but not if a praetor holds court dressed as a slave or a woman (9.25.17). The question therefore is whether all this requires the assumption of a general Sullan category penalizing whatever was done *auctoritate publica*, irrespective of whether the contravention took place *militiae* or *domi*. The suggestion is, however, that the probabilities are against this. Seneca, writing more than a century after the *lex Cornelia*, reflects the end-result of what was very possibly a long process of interpretation, and it should also be observed that several other *maiestas* laws were introduced before his time. And, perhaps even more significantly, the evidence suggests that *maiestas* categories were introduced only when immediate problems called for their introduction, and, in the light of the Roman aversion to unnecessary legislation, it is probable that each new category was confined to the problem which had evoked it; so Saturninus and Varius, and so also Caesar (p. 160) and Augustus (p. 275). In Sulla's case the problem was provincial governors. He is known to have legislated for this, but he is not known to have legislated for anything else; and indeed he is known *not* to have legislated for the case

⁶⁷ The *maiestas* law investigates what can properly be done; other laws investigate what may lawfully be done. (tr.)

of C. Cornelius. A 'proconsular' category as the sole substantive^{67a} content of his law is therefore quite possible. The interpretation proposed against Cornelius was perhaps the first attempt to extend this category by invoking the general principle of *qui auctoritate publica utitur*, and although it may have been a long way from the provinces to the tribunate, the analogy was not impossible. For if *Amtsverbrechen* could be extended to cover the fraud of the army contractor Postumius Pyrgensis (p. 29), it was not outrageous to suggest that the personal reading of a bill by a tribune was broadly analogous to a proconsul's breach of duty. Sulla's 'proconsular' category was, after all, the first attempt to bring *Amtsverbrechen* proper under the *lex maiestatis*. Saturninus was concerned only with seditious acts *against* the People and its tribunes, and there is no reason to believe that the form of *proditio* in which Varius was interested could be committed only by those who held office (but see p. 87). What Sulla did (perhaps following the precedent of the 'last decree' against Saturninus and Glaucia — p. 50) was to appropriate *maiestas minuta* for Optimate purposes. These purposes did not include the protection of the tribunate, but they did include the enforcement of proper conduct on the part of that segment of the official class with which Sulla was concerned. With the post-Sullan restoration of full powers to the tribunate it was realized that proper conduct on the part of tribunes (and other domestic office-holders) was a desirable objective. The *maiestas* laws were silent on this question, but the flexibility which had always been inherent in *Amtsverbrechen* was enlisted for the extensive interpretation of the *lex Cornelia*.

Little is known of the procedural rules under Sulla's law, but one provision which is attested by Ammianus Marcellinus (19.12.17) causes some difficulty: "ubi maiestas pulsata defenditur, a quaestionibus vel cruentis nullam Corneliae leges exemere fortunam."⁶⁸ Although torture in *maiestas* cases was common enough in the Dominate, a Sullan origin for the rule

^{67a}For adjective provisions of the *lex Cornelia* see pp. 83ff., 247ff.

⁶⁸ In cases of injured *maiestas* the Cornelian laws did not exempt any class from questioning under torture. (tr.)

cannot easily be accepted.^{68a} Ammianus therefore seems to need further consideration. The only *leges Corneliae* which survived *eo nomine*, and so found their way into Justinian's *Corpus Iuris*, were the *lex de sicariis et veneficis* and the *lex de falsis* (Dig. 48.8, 10). Whatever survived of the rest appears in the *Digest* under various *leges Iuliae*.^{68b} *Maiestas* is discussed in *Digest* 48.4 (*ad legem Iuliam maiestatis*), and the jurists whose works are there excerpted flourished in the late second and the third centuries A.D., so that it can safely be asserted that their works would have been available to Ammianus. It is therefore curious that Ammianus attests a rule *lege Cornelia*, when his juristic sources had placed their discussions of *maiestas* under the heading "ad legem Iuliam maiestatis". It is no answer to say that Ammianus chose the *lex Cornelia* because it was the first comprehensive *maiestas* law (Zumpt, 2.1.391), for it is not clear why Ammianus should have been a better legal historian than the jurists.

It is possible that Ammianus reflects a tradition which was not taken up by the classical jurists. Despite appearances, the Sullan proscriptions were not in fact lawless.⁶⁹ Sulla procured a law which appointed him dictator and ratified his acts in advance, and although it is generally known as a *lex Valeria*, there is a suggestion that it was also known as a *lex Cornelia*: "ista ipsa lege quae de proscriptione est, sive Valeria est sive Cornelia"⁷⁰ (Cic. *Rosc. Amer.* 43.125). There may even have been several *leges Corneliae* on the subject, which would explain the plural used by Ammianus: "eam (sc. legem) quam L. Flaccus . . . de Sulla tulit, ut omnia quaecumque ille fecisset essent rata . . . nam Valeria lege Corneliisque legibus eripitur civi, civi datur".⁷¹ This is perhaps the key to the problem. The *senatusconsultum ultimum* of 100 B.C. had made use of the word *maiestas* in order to give a colour of right to the action

^{68a} See Dig. 48.18.10.1; Paul, *Sent.* 5.29.2. Cf. Mommsen, *Straf* 407.4; Kübler, 548.

^{68b} Mommsen, *Straf* 615; Strachan-Davidson, 2.21, 23.

⁶⁹ Mommsen, *Staat* 2.1.736; cf. Heitland, 2.500-1; Rice Holmes, *Republic* 1.58.

⁷⁰ Under that notorious proscription law, be it Valerian or Cornelian. (tr.).

⁷¹ That law which L. Flaccus carried concerning Sulla, ratifying all his acts in advance. By the Valerian law and the Cornelian laws a citizen was deprived and a citizen was benefited. (tr.) Cic. *Leg. Agrar.* 3.2.5; cf. *Leg.* 1.42.

against Saturninus (pp. 49-50), and Sulla may have made a similar use of the word in his *leges de proscriptione*. There may therefore have been a tradition which linked these *leges Corneliae* to *maiestas*, quite distinct from the *lex Cornelia maiestatis*. In Ammianus' day *quaestiones cruentae* in fact applied to the *crimen maiestatis*, and he may therefore have believed that the *leges Corneliae de proscriptione* were the source of a rule which he knew as part of the *lex maiestatis*.

Cicero *Pis.* 21.50 assigns the rules confining proconsuls to their provinces both to Sulla's *maiestas* law and to Caesar's *lex Julia repetundarum* of 59 B.C. (p. 75). This raises the question as to how the same act could be both *maiestas* and extortion. It should be observed that there was sufficient precedent for prosecuting the same act as different crimes. Examples have been cited of prosecutions for both *perduellio* and *maiestas* on the same facts (pp. 27-30), and notice has been taken of Cicero's threat to charge Verres in quick succession with extortion, *peculatus* and *maiestas* (p. 30). Cicero *Cluent.* 41.116 poses a difficult problem: "Itaque et maiestatis absoluti sunt permulti, quibus damnatis de pecuniis repetundis lites maiestatis essent aestimatae."⁷² Henderson (77-8) believes in a double trial *de repetundis*. If the first trial resulted in condemnation a *litis aestimatio* followed, at which the claimants proved their individual shares of the globular amount which had already been assessed. But this view does not seem to be correct. A *litis aestimatio* did follow condemnation, but it was to determine and allocate the amount due, not merely to allocate it. The condemnation itself did not sound in money for, as in all judgments of a *quaestio*, the court pronounced only on the guilt or innocence of the accused. The peculiarity of the *quaestio de repetundis* was that a second stage was necessary, because of the quasi-civil restitution and damages which the *lex* contemplated (Mommson, *Straf* 447.1, 725-6, 1020; Hitzig, 10,17). Henderson argues that if the evidence at the first trial disclosed the commission of an offence other than extortion—for example, *maiestas*—the court might name the second crime

⁷² There have been many cases where a man was acquitted of *maiestas* but convicted of extortion, and ordered to pay damages based on his act of *maiestas*. (tr.)

at the *litis aestimatio* and there might be a second trial which, even if for *maiestas*, would be brought in the *quaestio de repetundis*. The reasoning appears to be that generic criminal definition began under Sulla and was further developed by the classical jurists, and with the Reception the criminal law came to be regarded as firmly linked to the crime rather than to the procedure; but prior to these developments charges of different kinds could be brought before the same *quaestio*, because attention was focused on the procedural link between them rather than on their substantive differentiation.

It is accepted that the procedural approach to Roman Criminal Law is the correct one (cf. pp. 17-18), but not in the sense in which Henderson understands it. An act fell under the *crimen maiestatis* either because it was prosecuted as such by the tribunes in the *comitia tributa*, or because it was submitted to the *quaestio maiestatis* by a *lex maiestatis*. It was not the *crimen maiestatis* when it fell under the *quaestio de repetundis*, any more than when it was prosecuted as *perduellio* in the *comitia centuriata*. There would have been no point in having separate jury courts *de maiestate*, *de peculatu*, and *de ambitu*, if the *quaestio de repetundis* had been available for all purposes. The answer may be that it is not necessary to seek a complex explanation for *lites maiestatis essent aestimatae*. Cicero (*Cluent.* 41.116) is really posing this sort of anomaly: "Proconsul X was condemned for extortion. At the *litis aestimatio* there was evidence that, in pursuit of wealth, he had left his province. This act of *maiestas* was proved, and influenced the *quantum* of damages. Subsequently he was charged with *maiestas* (in the *quaestio maiestatis*), but acquitted." The answer to this anomaly may be that Sulla's *maiestas* law and Caesar's extortion law had different objectives, and therefore differed in their scope. A governor who left his province was guilty of *maiestas* only if his conduct diminished *maiestas populi Romani*. He could, for example, secure an acquittal by successfully pleading *maiestatem auxi*. Under the *lex Julia repetundarum* the issue was whether he had received money. For example, if he left his province without profit to himself he could not be condemned *lege Julia*; but he could be convicted *lege Cornelia* if he had diminished *maiestas populi Romani*. It was probably easier to secure a conviction under

the Julian law than the Cornelian, for the receipt of money was a simple question of fact, while *minueritne maiestatem* was a complex issue. On the other hand, if money had not passed there was always the *lex Cornelia*. The distinction between the two laws is precisely illustrated by the trials of A. Gabinius, for whom money secured an acquittal *lege Cornelia*, but a conviction *lege Julia* (p. 76).

C. CONSPECTUS OF THE CRIMEN MAIESTATIS IN THE REPUBLIC

Substantial support exists for the view that in the Republic the *crimen maiestatis* could be committed only by magistrates and senators.⁷³ It must be considered how far this restrictive application of the *maiestas* laws can be accepted. The *lex Appuleia* was directed against sedition, and it may be thought that there is no reason why only magistrates and senators should have created violent disturbances. Indeed, when Caepio (jun.) overthrew the debate on Saturninus' corn law, "cum viris bonis impetum facit" (Auct. *Herenn.* 1.12.21). "Boni" may well have included his clients and members of his *familia*, and possibly idle citizens in search of bread and wine. It is true that it is not possible to point to the prosecution of a *humilis* under the *lex Appuleia*, but this may be accidental; on the other hand *leges de vi* may have sufficed for *humiles*.^{73a} A similar restriction under the *lex Varia* is more difficult. M. Livius Drusus, tribune in 91 B.C., found support for his citizenship campaign among Italian leaders (Plut. *Cat. Min.* 2; Diod. 37.11), who would have included financial interests able to make a substantial monetary contribution to the movement. It is very possibly because of their part that "ope" was included in the provision: "ii quorum ope consiliove" (Ascon. 22C). In the case of the *lex Cornelia*, however, it necessarily follows from the view which has been submitted as to its scope, that it was confined to the official and senatorial classes. Even if the *lex Cornelia* was a 'general' law of *maiestas* it is not likely that it embraced other classes, if the analo-

⁷³ Zumpt, 2.1.232-3, 254, 379-82, 388; Siber, *Analogie* 25, 41; Brecht, *Maiestas* 357-8.

^{73a} See also pp. 281-82.

gous position under the *lex repetundarum* is any guide. For only magistrates, senators, and their sons were liable under that *lex* (Mommsen, *Straf* 710-1), and a proposal by Pompey in 55 B.C. to extend its ambit to prefects, scribes, and other associates was defeated (Cic. *Rab. Post.* 6.13).⁷⁴ It would also be desirable, however, to account for trials such as that of Claudia (p. 28), which can perhaps be regarded as an example of the subsequently attested extension of the crime to members of a magistrate's family. This principle was applied when Claudius Fuscus, the son-in-law of Caecilius Classicus, was prosecuted under the *lex repetundarum*, and charges were also brought against Classicus' wife and daughter (Pliny, *Epp.* 3.9; 6.29).

It is accepted that the *crimen maiestatis* was not 'defined' in any *lex*, in the sense that *maiestatem minuere*, which was the ultimate criterion, was not 'defined'. A category of acts was laid down and it was left to the court, in its discretion, to say whether the commission by the accused of any of those acts had diminished *maiestas populi Romani*. But the fact that the court had a discretion does not justify criticism of the *crimen maiestatis* as vague and unascertainable. The concept of *maiestas*, as the Romans understood it, is a matter for painstaking analysis on the part of any modern scholar who would acquire some sort of appreciation of the notion. It may be that *maiestas minuta* seems to have been a most unsatisfactory yardstick for the assessment of criminal responsibility. But did the Romans have difficulty with it? They did not have to make a conscious intellectual effort in order to appreciate what their *maiestas* was, for it was something which permeated their entire thinking about themselves and their position in the world.⁷⁵ Nor did they find it unduly difficult to know when their *maiestas* was impaired.⁷⁶ But this does not mean that no serious attempt was made to put the concept of *maiestas* on a proper juridical basis. Categories were set out with some

⁷⁴ At a later date the *lex repetundarum* was extended to *socii ministrique* in connection with the extortionate practices of Caecilius Classicus, governor of Baetica. Plin. *Epp.* 3.9; 6.29.

⁷⁵ The 'white man's burden' was current coin in a recent imperial era. Would any 'definition' of 'burden' have conveyed the special political, social, and economic values which the expression implied?

particularity, and an act falling outside a category was not culpable unless it could, in accordance with juridical principles which were developed for the purpose, be interpreted into the *lex*. It is true that the *crimen maiestatis* was a political crime, and that the introduction of a new category, at the instance of a faction which happened to command a majority in the Assembly, could furnish an effective weapon against political opponents. The crime of *maiestas* was peculiarly suited to political purposes, for its connection with the interests of a particular faction could always be concealed by presenting it as demanded by the interests of the State. In the time of Saturninus the dominant faction believed that the public interest called for a programme of economic reform, and introduced a *lex maiestatis* to prepare the ground for that programme. Citizenship for the Italians was the dominant theme in Varius' time, and the issue duly found its way into a *lex maiestatis*, introduced at the instance of the faction which opposed the allies. Sulla sought a constitutional safeguard for his Optimate State, and found it in the *lex maiestatis*. At no time was the dominant faction concerned with matters irrelevant to its immediate purpose. The law of Saturninus protected the tribunes because they were essential to the implementation of his faction's policy; Sulla's law ignored them because they were inimical to his party's interests.

There was one overriding feature common to the Republican *crimen maiestatis* in all its forms, whether under the *Rechenschaftsprozess*, the *leges maiestatis*, or the extensive interpretation of the latter. The only form of *maiestas* with which the law was concerned was *maiestas populi Romani*, the *maiestas* of the Roman People, that is, of the Roman Republic. Personalities were relevant only in so far as the holder of an office which was in the gift of the Roman People was deemed

⁷⁶ The expressions 'it isn't cricket' and 'it isn't playing the game' connote rather a complex set of social values, but a member of a group which subscribes to those values does not have to ponder deeply in order to conclude that certain conduct does not measure up to the code. But is there any conceivable 'definition' of 'cricket' or 'game' which could convey the full meaning of the expressions to one not acquainted with the way of life which inspired them?

to possess *maiestas* in his representative capacity, and therefore an injury to or by a magistrate mediately diminished *maiestas populi Romani*. *Maiestas* did not vest in any individual as an individual, nor did it vest in any group other than the juristic person known as *populus Romanus*. Sulla was quite unable to entrench his senatorial regime by inventing a *maiestas senatus* for, whatever the realities of effective control, Rome's superiority was given a juristic formulation only as *maiestas populi Romani*, and the constitutional safeguards furnished by the *crimen maiestatis* were riveted to that concept. This was the meaning of the *crimen maiestatis populi Romani imminutae* in the Roman Republic, at least until the period of Caesar's rise and ultimate supremacy. It remains to consider whether the crime, or the *maiestas* which it was intended to protect, underwent any change under Caesar or Augustus.

PART TWO

Caesar and the Lex Maiestatis

Maiestas in 59 B.C.

The *crimen maiestatis* loomed large in the recriminations between Caesar and the Optimates during the period from Caesar's first consulship to the outbreak of the civil war. There were frequent threats of prosecution, principally by the Optimates, but occasionally by Caesar as well.¹ It did not come to an actual trial of Caesar, but only because he was at no time a *privatus* in the relevant period. There were good grounds for his indictment, and if the Optimates had had their way the most celebrated *maiestas* trial in Republican history would have resulted. Caesar saw this danger and feared it, and devoted a good deal of his propaganda resources to averting it. Statements in Caesar's Commentaries are said to show a transference of *maiestas* from the Roman People to

¹ It is just possible that Caesar was the first to use the *maiestas* law in this period. Mommsen (*Straf* 566-7), postulates, on the authority of Appian, *B.C.* 2.2.12, that the inclusion in Caesar's first agrarian law of 59 B.C. of the death penalty for refusing to swear to the law was "Subsumirung dieser Unterlassung under die Perduellion"; he also invokes the *Rechen-schaftsprozess* for the refusal of Metellus Numidicus to swear to Saturninus' agrarian law of 100 B.C. (*Staat* 2.324 and n.2; cf. p. 56 n.80). Levy (34 and n.2; cf. Lenglé, *Straf* 47) describes refusal to swear to Caesar's law as *maiestas*, but holds that the sanction in fact meant interdiction from fire and water. Siber (*Analogie* 36.3) rejects Appian in regard to Caesar's law, and holds that the meaning of μεγάλα τάξαντες ἐπιτίμια (Plut. *Cat. Min.* 32.3) is that the penalty was a fine. Siber regards the agrarian laws as *ad hoc* laws creating a *delictum sui generis* which was not based on a general criminal concept, and was therefore not related to *maiestas*. It is not possible to exclude the possibility that the agrarian law, like the *lex Papia* (pp. 77-79), referred breaches to the *quaestio maiestatis*, although the inclusion of a capital sanction in Caesar's law would seem to exclude *maiestas*.

Caesar (p. 126), but it is suggested that the evidence shapes differently if related to Caesar's urgent desire to avoid a prosecution.

The attack on Caesar was launched immediately after his consulship, in the early part of 58 B.C., when the praetors C. Memmius and L. Domitius sought to bring his *acta* on review in the Senate, alleging that he had acted *adversus auspicia legesque*. Caesar declared his readiness to submit to the Senate's decision, but after three days' altercation with the praetors he left for his province.² Suetonius (*Caes.* 23.1) reports that there was then a "praeiudicium aliquot criminibus" against Caesar's quaestor; thereafter the tribune L. Antistius initiated a prosecution against Caesar himself, but on appeal to the tribunes Caesar "obtenuit cum rei publicae causa abesset reus ne fieret". The appeal would have been under the *lex Memmia*, whereby anyone who was absent on public service could not be tried.³ It is probable in Suetonius' context that the *aliquot crimina* against the quaestor were also brought up in the proposed indictment of Caesar. The charges were, broadly, that Caesar had acted "adversus auspicia, legesque et intercessionones" (*Suet. Caes.* 30.3).

For further information as to the *aliquot crimina* it is necessary to go to the trial of P. Vatinius, tribune during Caesar's consulship, and Caesar's legate in 58 B.C.⁴ It is said that in the latter year Vatinius returned voluntarily to Rome to stand trial, waiving the protection of the *lex Memmia* (*Cic. Vat.* 14.34). At the trial there was a preliminary issue on the appointment of the president of the *quaestio*. Memmius apparently wanted to appoint a quaesitor by lot, but Vatinius claimed a right of challenge under his own *lex de alternis consiliis reiciendis*.⁵ As a tribunal had not yet been con-

² *Suet. Caes.* 23.1; *Suet. Nero* 2.2; *Cic. Vat.* 6.15; *Sest.* 40; *Schol. Bob.* 89-90, 116.

³ Mommsen, *Staat* 2.1.585.4; *Straf* 353.2; Greenidge, *Procedure* 461.

⁴ Broughton (2.199) queries this legation. Gelzer (87) accepts it without comment, while Pocock (123) takes *Cicero Vat.* 15.35 as evidence for it.

⁵ *Schol. Bob.* 122; *Cic. Vat.* 11.27. Although *quaesitor* primarily meant the president of the murder court, a *quaesitor* could preside over any *quaestio* instead of a praetor. Mommsen, *Staat* 2.201.4; 2.584 and nn. 2, 4; *Straf* 206; Greenidge, *Procedure* 431. Cf. p.79 n.57 above. For the nature of Vatinius' law see Pocock' 111.

stituted, it would appear that the proceedings can properly be described as a *praeiudicium*.⁶ Memmius having ruled against Vatinius, and having directed that lots be drawn, Vatinius appealed to the tribunes "ne causam diceret", a step described by Cicero as unprecedented.⁷ The appeal would not have been under the *lex Memmia*, but may well have been directed against the ruling of Memmius on the preliminary issue, for the tribunes had power to quash proceedings at any stage before the definite constitution of a court. But the appeal apparently failed, whereupon Clodius and his friends brought the proceedings to a violent conclusion.^{7a}

It is suggested that the charges against Vatinius can be brought under the three heads of *adversus auspicia, legesque et intercessiones* which were, according to Suetonius (*Caes.* 30.3), alleged against Caesar. Vatinius was summoned under the *lex Licinia et Iunia*⁸ and there is mention of the *leges Aelia et Fufia* and the *lex Caecilia Didia*.^{8a} It will be seen that these charges correspond easily enough to the category *adversus leges*, and it may even be possible to be more specific; for Pocock (191) believes that the charge *lege Licinia et Iunia* was one of *maiestas* and, although he does not develop his hypothesis, it is found that there is evidence to support his view. The purpose of the *lex Licinia et Iunia* was "ne clam aerario legem ferri liceret, quoniam leges in aerario condebantur";⁹ the *rogator* had to lodge a copy of his *rogatio* in the *aerarium*, and after this it could not be amended.¹⁰ Falsifying public records was *maiestas* (*Dig.* 48.4.2), and the suggestion is that it was precisely in this way that Vatinius frustrated the *lex Licinia*

⁶ A *praeiudicium* was a proceeding to decide a preliminary issue. Buckland, 382, 395; Greenidge, *Procedure* 460. The scholiast makes the preliminary nature of the proceedings clear: "Vatinius coeperat accusari" (*Schol. Bob.* 122).

⁷ *Schol. Bob.* 122; *Cic. Vat.* 14.33-4; cf. Pocock, 123.

^{7a} *Cic. Vat.* 14.33-4; *Schol. Bob.* 122.

⁸ *Cic. Vat.* 14.33; *Sest.* 135; *Att.* 2.9.1. The scholiast (*Schol. Bob.* 122) confuses this law, passed in 62 B.C., with the *lex Licinia de sodaliciis* of 55 B.C. Cf. Mommsen, *Staat* 2.1.586.1; Pocock, 194.

^{8a} *Cic. Vat.* 2.5; 7.18; 9.23; *Sest.* 135; *Att.* 2.9.1.

⁹ To prevent legislation being concealed from the treasury, since laws had to be lodged in the treasury. (tr.)

¹⁰ *Schol. Bob.* 106; cf. Mommsen, *Staat* 3.1.371 and nn. 4, 5. In 51 B.C. the

et Iunia, and that he did so in connection with the passing of Caesar's first agrarian law in 59 B.C.

The principal attack on Caesar's *acta* was aimed at his first agrarian law (*Schol. Bob.* 116), and Vatinius had a great deal to do with that statute.¹¹ The circumstances of its introduction were that Caesar, having made no progress in the Senate, took his proposal to the *comitia* without a *senatus consultum*.¹² At this stage the *rogatio* would already have been lodged in the *aerarium*, and could not be amended. After a series of *contiones*, which Bibulus and Cato tried to obstruct, the law was passed (Taylor, *Chronology* 259; Gelzer, 66). At this point Appian must be consulted. After reporting that the law was carried (*B.C.* 2.2.11), he continues (*B.C.* 2.2.12) as follows: καὶ ἐπ' αὐτοῖς τὸν τε δῆμον ὥρκωσεν ἐς αἰὲς κυρίου νομεῖν καὶ τὴν βουλὴν ἐκέλευεν ὁμνύειν. ἐνισταμένων δὲ πολλῶν καὶ Κάτωνος εἰσηγείτο μὲν ὁ Καῖσαρ θάνατον τῷ μὴ ὁμόσαντι καὶ ὁ δῆμος ἐπεκύρου.¹³

According to Appian, then, the penalty was introduced after it had become known that some Optimates refused to swear to the law. Whatever the penalty was (p. 93 n.1), its introduction overcame the resistance of Cato and his friends (*Plut. Cat. Min.* 32.5; Dio, 38.7.1-2). It cannot be supposed that εἰσηγείτο . . . ἐπεκύρου means the introduction of a fresh law creating the penalty, for Caesar's first agrarian law was carried on 20 January, and the senators took the oath at the beginning of February (Taylor, *Chronology* 267). There

consul Marcellus was able to say that Pompey's *lex de iure magistratum* barred Caesar from standing for the consulship *in absentia*, because Pompey had only added a proviso for Caesar "lege iam in aes incisa et in aerarium condita" (When the law had already been engraved on bronze and lodged in the treasury) (*Suet. Caes.* 28.2-3).

¹¹ Pocock (161-79), discussing the ambiguous nomenclature of laws introduced by a tribune at the instance of a consul, shows that a *lex* could be named either for the tribune who introduced it, or the consul who instigated it. He argues that Caesar's agrarian law, although known as a *lex Julia*, was in fact proposed by Vatinius.

¹² See particularly Taylor, *Chronology* 259; cf. Gelzer, 65.

¹³ He bound the People by oath to preserve these laws in perpetuity, and directed the Senate to swear a similar oath. When Cato and a number of others refused, Caesar proposed the death penalty for those who refused to swear, and the People accepted this proposal. (tr.)

would therefore not have been time for a *trinum nundinum* between the proposing of an amending law when the refusal of some Optimates to swear became known, and its enactment by the beginning of February. Appian's meaning may be that the penalty was added before the vote (Gelzer, 67; Taylor, *Chronology* 259). The other possibility is that it was added after the vote, access having been obtained to the copy of the bill in the *aerarium* in order to amend it, although Appian's language seems to be against this. But in either event there was tampering with a public record in the *aerarium*, and therefore something which could have been charged as *maiestas*. The *lex Licinia et Iunia*, which certainly had a criminal sanction,¹⁴ was probably one of the laws which, being of general application, cannot have created an *ad hoc* court, and must therefore have specified a particular *quaestio perpetua* to which breaches were to be referred (cf. pp. 77-79). Given an act of Vatinius which was *maiestas*, and given that he was brought before a *quaestio*, it is probable that it was the *quaestio maiestatis*.¹⁵

The allegations against Vatinius included breaches of the *leges Aelia et Fufia*, and the *lex Caecilia Didia* (p. 95). The Aelian and Fufian laws of the second century B.C. dealt with *obnuntiatio*, which Bibulus had used as a political weapon against Caesar in their joint consulship.¹⁶ As these laws preceded the first standing court for *maiestas*, the threat against Vatinius here would not have been in the *quaestio maiestatis*. But the crime was disregard of the auspices, which could have been prosecuted as *maiestas* in the *comitia tributa*, in the same way as in the case of P. Claudius Pulcher (pp. 27-28). This allegation against Vatinius therefore corresponds to the *adversus auspicia* raised against Caesar.¹⁷

¹⁴ "poena recenti lege Iunia et Licinia" (Cic. *Phil.* 5.3.8).

¹⁵ This hypothesis may explain the scholiast's confusion of the *lex Licinia Iunia* and the *lex Licinia de sodaliciis* (p. 95 n.8). It has been submitted (p. 78) that *illicita collegia* were prosecuted in the *quaestio maiestatis*. The scholiast, knowing this, and also recognizing Vatinius' conduct as *maiestas*, but not addressing himself to the *maiestas* implications of the *lex Licinia et Iunia*, may have believed that Cicero, *Vat.* 14.32 meant the *lex Licinia de sodaliciis*.

¹⁶ Mommsen, *Staat* 1.111 and n.4; 113.1; Pocock, 81-2; Taylor, *Politics* 82, 88, 134; Gelzer, 70. ¹⁷ See p. 98.

Cicero says that Vatinius, when tribune, was guilty of violent disregard of the veto of his colleagues (*Vat.* 2.5; 7.16). This is clearly a reference to the circumstances of Caesar's first agrarian law, when violence was done to three tribunes who interposed their veto.¹⁸ Therefore the allegation of *adversus intercessionem* against Caesar also applies to Vatinius. Furthermore, Cicero (*Vat.* 2.5) contrasts Vatinius' conduct with that of C. Cornelius, whom Cicero had defended on a charge of *maiestas* (pp. 71-5); the reference to the case of Cornelius suggests a *maiestas* charge—or the possibility of one—against Vatinius.

Who was the quaestor whom Suetonius (*Caes.* 23.1) says was charged with *aliquot crimina*? Gelzer (87 and n.142) dismisses him as Caesar's ex-quaestor who was prosecuted with an unknown outcome, and indeed very little is known of the quaestors who held office in 59 B.C. Broughton (2.190) lists under that year L. Aemilius (Lepidus) Paullus and one Caecilius, and records M. Favonius as "quaestor before 59". None of these is a likely accused at the instance of Caesar's opponents. Paullus was no friend of Vatinius, and had helped to destroy Catiline and Cethegus.^{18a} It is of course conceivable that Caecilius the quaestor may be the uncle of Atticus whom Cicero cultivated; but as Atticus would have been 50 in 59 B.C., and as Caecilius was an elderly uncle, the latter would not have been on the bottom rung of the ladder in 59 B.C.^{18b} Favonius must obviously be excluded from the reckoning, for he was an implacable opponent of Caesar's agrarian law (Dio. 38.7.1-2). But two expressions in Suetonius (*Caes.* 23.1) fit Vatinius very well: "*praeiudicium*" and "*aliquot criminibus*". *Praeiudicia* are not often mentioned in the literary sources, and a magistrate who had *aliquot crimina* to his debit

¹⁷ The *lex Caecilia Didia* of 98 B.C. restated the requirement of a *trinum nundinum* between the promulgation of a *lex* and the vote on it (Mommsen, *Staat* 3.1.377 and n.1). It has been suggested (p. 97) that no amending law can have been proposed, because there was not time for a *trinum nundinum*. There is, however, the alternative possibility that there was an amending law which disregarded the statutory period.

¹⁸ Dio, 38.6.1-3; Plut. *Cat. Min.* 32.2; Appian, *B.C.* 2.2.10-11. Cf. Taylor, *Chronology* 259; Gelzer, 66.

^{18a} Cic. *Vat.* 10.25; *Schol. Bob.* ad. loc.

^{18b} Cic. *Att.* 2.9.1; 1.1; 2.19.5; 2.20.1; Nepos, *Att.* 5.

should have better documentation than a casual mention by Suetonius. If the description of Vatinius as a quaestor can be explained, it can probably be accepted that Suetonius (loc. cit.) refers to the preliminary proceedings against Vatinius in the *quaestio maiestatis*.

Vatinius and P. Sestius were quaestors in 63 B.C., and both had their terms extended in 62. But their titles differed. Vatinius became legatus in Further Spain to the ex-praetor C. Cosconius, while Sestius served as quaestor to the ex-consul C. Antonius in Macedonia.¹⁹ It may be thought that, in reflection of the close link between the urban quaestorship and the consulship, a practice was known whereby a quaestor in his second year was a legatus if he served an ex-praetor, and a quaestor if attached to an ex-consul. But the rule was not uniform. Caesar was quaestor in 69 B.C., and served under the ex-praetor C. Antistius Vetus in Spain, for that and part of the following year. It can obviously be accepted that even if his first year in Spain was his magisterial year, his second year there was prorogationary. But although he served an ex-praetor, the sources uniformly describe him as a quaestor.²⁰ It was not certain whether Q. Pompeius Bithynicus was attached to the ex-praetor M. Iuncus, in Bithynica in 75 B.C., as a quaestor or a legate (Broughton, 2.100). C. Malleolus, quaestor in Macedonia under the ex-praetor Cn. Cornelius Dolabella, died in office in 80 B.C.; C. Verres, who was already legate to Dolabella, was appointed *legatus pro quaestore* in place of Malleolus (Cic. *Verr.* 1.4.11; 2.1.15; 2.1.36; cf. Broughton 2.76, 80-1). The offices held by Verres fluctuated greatly. He was quaestor in 85, and proquaestor to the ex-consul Carbo in 83; he remained proquaestor in 82 and 81, and was a legate and *legatus pro quaestore* to Dolabella in 80.^{20a} It would therefore seem that if Suetonius had had occasion

¹⁹ Cic. *Vat.* 5.11, 12; *Sest.* 13. Cf. Broughton, 2.166, 168, 176-7; Mommsen, *Staat* 2.1.531, 563 and n.4; Greenidge, *Public Life* 213. Broughton (2.176) describes Sestius as a *proquaestor* in Macedonia, but Mommsen (*Staat* 2.1.562) believes that there was no generally accepted appellation for provincial quaestors.

²⁰ Suet. *Caes.* 6.7. Auct. *Bell. Hisp.* 42.1; Vell. 2.43.4.

^{20a} Broughton, 2.61, 64, 70, 633.

to refer to Verres at any time during this period, he may well have confined himself to the word 'quaestor'.

In the late Republic the appointment of legates required the Senate's approval, and Cicero criticizes Vatinius for having become Caesar's legate without a *senatusconsultum*.²¹ But Cicero himself discloses the basis of the appointment (*Vat.* 35): "tua lege, dicis"—that is, the *lex Vatinia de imperio C. Caesaris* (Pocock, 124). As the regular procedure *senatus auctoritate* included sortition, it follows that Vatinius would have been appointed *sine sorte*. The appointment of Antony to Caesar's staff in 52 B.C. should now be considered. In the summer of 52 he was Caesar's legate during the siege of Alesia (*Caes. B.G.* 7.81.6). But at the end of the campaign that year "Caesar M. Antonium quaestorem suis praefecit hibernis"²² (*Hirt. B.G.* 8.2.1). Antony had returned from Gaul to seek election as quaestor and during his election campaign he had tried to kill Clodius (*Cic. Phil.* 2.48, 49). As Clodius was eventually murdered in January 52 (*Cic. Mil.* 27), Antony's attempt to kill him would have been in the summer of 53, shortly before the elections in July that year. Therefore his return from Gaul to seek the quaestorship was in the early summer of 53. It follows that this sojourn in Gaul was not the occasion of the legation attested in *Bellum Gallicum* (7.81.6). Cicero (*Phil.* 2.50) criticizes Antony as follows: "Quaestor es factus; deinde continuo sine senatus consulto, sine sorte, sine lege, ad Caesarem cucurristi."²³ "Quaestor es factus" refers to Antony's assumption of office, which would have been on the 5th December, 53. The allotment of quaestors' competences would have been made before the 1st January, 52, but as Antony's departure was *continuo* and *sine sorte*, he would have rushed off to Caesar in December 53 (*Ascon.* 41C). But Cicero's *sine lege* cannot be right. Why should Antony, having taken the trouble to canvass for the quaestorship, and having done so with Caesar's blessing (*Cic. Phil.* 2.49), have thrown away the benefit of his election by not awaiting the

²¹ *Cic. Vat.* 15.35-36; cf. *Sest.* 33. See also Mommsen, *Staat* 2.1.677ff.

²² Caesar appointed his quaestor M. Antonius to take charge of the winter quarters. (tr.) *Hirt. B.G.* 8.2.1.

²³ After being elected quaestor you rushed off to Caesar without a decree of the Senate, without an allotment, without lawful authority. (tr.)

sortition which would determine his sphere of competence? He did not wait because it was not necessary. There was probably a clause in the *lex Vatinia de imperio*, empowering Caesar to appoint *quaestores legatosque* to his staff without the Senate's approval, and without allotment.

Antony's title oscillated rather wildly after his arrival in Gaul as quaestor. In the summer of 52 he was a legate, and in the winter of that year a quaestor (p. 100). In 51 he was a quaestor (*B.G.* 8.24.2, 38.1), and a legate (*B.G.* 8.46.4). In 50 he was a quaestor (*B.G.* 8.50.1). Suetonius would have found that Antony the quaestor and Vatinius the legate had taken office under the same *lex*, and with the same apparent disregard of protocol. He would have noticed that Antony the quaestor was also Antony the legate. He is not to be condemned for describing Vatinius the legate as a quaestor.²⁴

The sequence of events in Suetonius (*Caes.* 23.1) may now be re-examined. After three days' debate in the Senate, the following took place: "[Caesar] in provinciam abiit. Et statim quaestor eius in praeiudicium aliquot criminibus arreptus est. Mox et ipse a L. Antistio tr. pl. postulatus appellato demum collegio obtinuit, cum rei publicae causa abesset, reus ne fieret."²⁵ Gelzer (87-9) puts forward a different sequence, holding that Caesar preferred not to await a decision in the Senate, but to pass outside the *pomerium*, and so to take up his proconsular *imperium*. Before doing so he was summoned by Antistius, and successfully appealed to the tribunes. He then waited outside the city for the outcome of his counter-measures, including Clodius' proposal for the banishment of Cicero. A *contio* on this proposal was held outside the *pomerium*, to enable Caesar to attend. And it was only late in March that he left for Gaul.²⁶

²⁴ Dio also seems to have had trouble with 'legate' (53.14.5), and with Antony, whom he says was Caesar's quaestor in Spain (45.40.3).

²⁵ When Caesar left for his province preliminary proceedings were at once started against his quaestor on a number of charges. Then Caesar himself was summoned by the tribune L. Antistius, but on appealing to the college of tribunes he was exempted from prosecution on the ground that he was absent on public business. (tr.).

²⁶ Cf. Taylor, *Politics* 137. In regard to the date of Caesar's departure for Gaul, the evidence is that the Helvetii had fixed the date for their assembly at the Rhone: "Is dies erat a.d. V Kal. April., L. Pisone A. Gabinio con-

It is therefore quite possible that the attempt to prosecute Caesar was made before his departure, even in the limited sense of leaving the *pomerium*, and indeed this is supported by what Caesar said at Pharsalus: "Hoc voluerunt; tantis rebus gestis Gaius Caesar condemnatus essem nisi ab exercitu auxilium petissem"²⁷ (Asinius Pollio *ap.* Suet. *Caes.* 30.4). Although Caesar's proconsulship furnished his opponents with a great deal more material for a *maiestas* prosecution (Chapter 6), the context of Suetonius (*Caes.* 30.3-4) suggests that Caesar was referring, at least among other things, to the attempt to prosecute him for *maiestas* after his first consulship; for Suetonius cites Caesar's words at Pharsalus in support of his theory that the civil war was precipitated by Caesar's fear that he would be compelled to answer for his flouting of the auspices, the laws and the right of intercession. But if the attempt to prosecute Caesar was made before he left for his province, the *praeiudicium* against Vatinius must have taken place before he took up his legation. How is this to be reconciled with Cicero's assertion that Vatinius returned from his legation to stand trial: "ex legatione redieris" (*Vat.* 14.34)? The answer seems to be that the protection of the *lex Memmia* extended to one who was about to depart *rei publicae causa*.²⁸ This explains why Cicero (*Vat.* 14.33) begins his attack on Vatinius' conduct at his trial (in the course of which he mentions "ex legatione redieris") with the question: "Quaero etiam illud ex te, quod privatus admisisti?"²⁹ Vatinius, although a *privatus*, and merely *rei publicae causa afuturus*, was protected by the *lex Memmia*; *redire ex legatione* simply meant to waive that protection.³⁰

sulibus. Caesari cum id nuntiatum esset . . . maturat ab urbe proficisci" (*B.G.* 1.6.4, 7.1).

²⁷ This is what they desired. I, Gaius Caesar, with such achievements to my credit, would have been condemned if I had not sought the assistance of my army. (tr.) Asinius Pollio, *ap.* Suet. *Caes.* 30.4.

²⁸ Mommsen (*Straf* 353.2), citing (ad Suetonius *Caes.* 23) Paul *Dig.* 3.3.54pr: "neque qui rei publicae causa afuturus est . . . invitus iudicium pati [non] potest" (Those who are about to depart on public service cannot be prosecuted without their consent.)

²⁹ My question is this: What did you do as a private citizen? (tr.)

³⁰ Caesar's legate Messius seems to have done something similar in 54 B.C. (*Cic. Att.* 4.15.9).

In the light of the riotous termination of Vatinius' trial by Clodius and his friends, why did Vatinius 'return from his legation' in the first place? The answer may be that, relying on his *lex de alternis consiliis reiciendis*, he foresaw two possibilities. He might secure a quaesitor to his liking, and an acquittal would take the sting out of the attack on Caesar. Or, which is more likely, the pressing of challenges under his law would delay or even frustrate the constitution of a court. Time was of the essence for Caesar. There were matters to be completed before he left (cf. p. 101), but the Optimate attack was gathering momentum. The first step was probably Memmius' summons to Vatinius to appear within thirty days (*Vat.* 14.33). Caesar felt that they were likely to leave him alone until they had settled with his legate, and it was decided that Vatinius would appear, and would adopt delaying tactics. When, therefore, the praetors launched their attack in the Senate, Caesar could confidently agree to submit to its jurisdiction, for his real fear was a prosecution for *maiestas*, and Vatinius was holding the fort in that quarter. But something went wrong. Memmius ruled against Vatinius, and Clodius could find no legal basis on which to intercede (*Vat.* 14.33). Violence resolved that difficulty, but the Optimates were not shaken off, and put up the tribune Antistius to prosecute Caesar. Mommsen (*Staat* 1.275.3) believes that it was proposed to try Caesar in the *quaestio*, but the better view is that it was intended to bring him before the *comitia tributa*. It was abundantly clear that the *quaestio* had not proved effective against Vatinius, but the Optimates could anticipate a more favourable result in the *comitia*, for there was a marked public reaction against the dynasts, and Optimate influence in the Assembly was strong.^{30a} It is quite true that Caesar managed to block the proceedings by invoking the *lex Memmia*, but his readiness to abide the Senate's decision could not be safely maintained. It is known that Cato swore to bring him to book as soon as his legions were disbanded (Suet. *Caes.* 30.3), and Taylor (*Politics* 137) is probably correct in her assertion that Cato first made his intention known when Caesar evaded prosecution at the instance of Antistius—although he often

^{30a} Cf. Taylor, *Politics* 136f.; Gelzer, 87.

repeated it subsequently (Suet. loc. cit).³¹ In these circumstances prudence dictated the hurried breaking off of the altercation with the praetors, and the exit from the walls.

³¹ Gelzer (90) illustrates the neat way in which Caesar turned Cato's fulminations of *maiestas* against him. In 58 B.C. Clodius had Cato appointed *extra ordinem* as quaestor *pro praetore* to administer the annexation of Cyprus under Clodius' law of that year. Cato, the enemy of all extraordinary authority, had the unenviable choice of accepting, to the prejudice of his principles, or of refusing, at the risk of a charge of *maiestas*. Gelzer's suggestion is not fanciful. If it was *maiestas* for Verres to omit something which his office required him to do (p. 79), it was not difficult to extend the rule to a refusal to accept office.

Maiestas in Gaul

Caesar left for Gaul with cries of *maiestatem minuisti* ringing in his ears—and promptly collided with the *lex maiestatis* at the very outset of his command. Consequent upon his refusal of passage through the province to the Helvetii, the migrants elected to traverse Aeduan and Sequanian territory outside the province. Caesar left his province in order to forestall them (*B.G.* 1.6-11), and did so *iniussu populi aut senatus*. This breach of Sulla's *maiestas* law called for an explanation and, as Rambaud (112) puts it: "Dès le début, le *Bellum Gallicum* plaide".¹ Caesar's main defence was that Santonian territory, the objective of the Helvetii, was uncomfortably close to Tolosa in the province: "Caesari renuntiatur Helvetiis esse in animo per agrum Sequanorum et Aeduorum iter in Santonum fines facere, qui non longe a Tolosatium finibus absunt, quae civitas est in provincia. Id si fieret, intellegebat magno cum periculo provinciae futurum ut homines bellicosos, populi Romani inimicos, locis patentibus maximeque frumentariis finitimos haberet" (*B.G.* 1.10. 1-2).

Gelzer, in a courageous attempt to defend Caesar, holds that the principle of "gefährlichen Nachbarn" gave Caesar a complete

¹ Cf. Taylor, *Politics* 157-8: "The whole work . . . is an apology for the Gallic proconsulship . . . It is an answer to the charges that his enemies and notably Cato had made against Caesar." Gelzer (94) is to a similar effect: "Caesar wusste, wie seine Gegner in Rom jeden seiner Schritte mit argwöhnischen Augen beobachteten und gerade in solchen Eigenmächtigkeiten das willkommenste Anklagematerial finden würden. Als er im Jahr 51 seine Kriegsberichte veröffentlichte, hat er darum mit besonderer Sorgfalt herausgearbeitet, wie dieser Helvetierkrieg, aus dem alle andern zwangsläufig hervorgingen, mit den bewährten Grundsätzen der römischen Politik durchaus im Einklang stand."

defence to the proposed charge of *maiestas*, but the passages on which Gelzer relies² would not have commended themselves to the *quaestio maiestatis*. Polybius (1.10.11) illustrates the Roman dilemma when the Mamertini appealed for aid. A favourable response would be inconsistent with Rome's attitude to her own citizens who had betrayed Rhegium, but Punic encroachment raised the threat of a dangerous neighbour. The Senate having refused to sanction an expedition, the People entrusted the command in aid of the Mamertini to the consul Appius Claudius. This was not a case of a proconsul leaving his province. But even if it had been it would not have been *maiestas*, for it was *iussu populi*. In Livy (42.52.15) the accusation is levelled at the Roman State, not at a proconsul, of attempting to enslave Macedonia "ne rex vicinus imperio sit Romano".³ St Augustine (*Civ. Dei*.4.15) confines himself to the moral issue facing a state, not a proconsul, which has an inconvenient neighbour.

If Caesar had acted *iussu populi aut senatus* the *lex maiestatis* would not have been in issue. The principle of 'dangerous neighbours', which was invoked to justify Roman aggression, was presumably one on which Caesar intended to rely in support of a plea of *maiestatem auxi*, if it ever came to a prosecution. Although the trial of Norbanus, at which this defence was developed, was held *lege Appuleia*, while Caesar would have been charged *lege Cornelia*, there is nothing against the view that a similar defence was open under Sulla's law, which also used the expression *maiestatem minuere*. It may well be that the trial of Gabinius (pp. 76-7), which was *lege Cornelia*, was a test case to prepare the ground for Caesar, in case it ever became possible to prosecute him. As it was common cause that Gabinius had left his province without authority, it may be assumed that the basis of his acquittal (apart from money) was a successful plea of *maiestatem auxi*.

Caesar's principal difficulty was to explain why he had not sought authority to leave his province. His attempt to meet this difficulty in *Bellum Gallicum* (1.10) deserves to be added to

² Polybius, 1.10, 11; Livy, 42.52.15; St Augustine, *Civ. Dei*. 4.15. Cf. Gelzer, 93 and n.4; 94 and nn.7, 8; 155f.

³ To avoid having a king as a neighbour of the Roman Empire. (tr.)

Ramnaud's many striking illustrations of Caesar's "déformation historique". Standing alone, the position as depicted in this passage would have supplied some sort of answer to a *maiestas* charge. Caesar presents the sequence of events swiftly and persuasively: he learns of the intention of the Helvetii to pass through Sequanian and Aeduan territory; he appreciates the danger to Tolosa, hurries to Cisalpine Gaul, gathers additional forces there,⁴ fights his way over the Alps—and takes his army across the Rhone and out of the province. The calculated impression was that the matter was so urgent that there was simply not enough time to refer to Rome for authority, and the court might well have hesitated to convict in such a case.

The passage is, however, misleading. Before he left for Gaul Caesar knew that the Helvetii preferred the easier route through the province to the more difficult one through Sequanian territory (1.6.1f.; 1.7.1). He decided that it would be dangerous to let them through the province (1.6.3). He therefore realized that they would be forced to take the extra-provincial route, and that he would find it necessary to oppose them.⁵ On his arrival in Gaul he immediately ordered matters to that end. He negotiated with the Helvetii, intending to deny them passage, but needing time to complete his preparations (1.7.3ff.); these included the calling up of the additional forces (1.7.5) which he later ingeniously represents (1.10.3) as being collected only after the news of the Helvetian decision to take the extra-provincial route. Having adjourned the negotiations (1.7.5), Caesar carried out extensive works and dispositions (1.8.1f.), and then communicated his refusal to the Helvetian delegates. The Helvetii, after an unsuccessful attempt to force the Rhone crossing (1.8.4), negotiated with

⁴ Gelzer (93-94) and Ramnaud (112) believe that this levy was unconstitutional. If so, it would have formed the basis of another charge of *maiestas* (cf. Mommsen, *Straf* 558). But Suetonius *Caes.* 24.2 seems to imply that it was only after Luca (56 B.C.) that Caesar raised legions *privato sumptu* in addition to those *quas a re publica accepisset* (At his own expense . . . Which he had got from the State). Perhaps Vatinius' law authorized Caesar to raise troops at the public cost in Cisalpine Gaul.

⁵ When the Helvetii requested permission to go through the province they cannot have said "propterea quod aliud iter haberent nullum" (Because they had no other route) (1.7.3), for on Caesar's own showing he already knew of the alternative route (1.6.1).

the Sequani; Caesar's account of the negotiations is not inspired conjecture, but seems to be based on accurate information. In all this, however, Caesar does not mention the danger to Tolosa nor that he intends leaving his province in order to avert it. These matters are introduced for the first time when he receives the 'surprising' report that the Helvetii have chosen the extra-provincial route (1.10). The fallacy in Caesar's presentation becomes patent if it is realized that in fact the danger to Tolosa was quite independent of the route taken by the Helvetii. The danger arose from the fact that Santonian territory was the ultimate objective of the migration (1.10.1), an objective which would have been reached whichever road was followed. If Caesar truly believed in a danger to Tolosa,⁶ the danger and the steps to be taken to meet it must have been continuously present to his mind from the time when he received his first reports while still delaying outside the *pomerium* at Rome. Yet he made no attempt at any stage to obtain permission to leave his province.

Caesar, well knowing the weakness of the 'dangerous neighbours' defence, tried to bolster it up. The disastrous defeat of the consul L. Cassius by the Helvetian Tigurini in 107 B.C. is mentioned four times in the account of the events leading to the outbreak of the Helvetian war. At the first interview with the Helvetian delegates Caesar's decision to refuse them passage was prompted primarily by his recollection of the disaster (1.7.4). It was perhaps divine justice that the Tigurini were the first Helvetian canton to be defeated by Caesar (1.12.5f.). The Helvetii warned Caesar that a continuation of the war might bring a repetition of the ancient disaster (1.13.2ff.). Caesar replied that the recent "*iniuriae*" made it impossible to overlook the "*vetus contumelia*" (1.14.3). The defeat of Cassius had strong allusions to *maiestas*, for not only was there the general involvement of *maiestas populi Romani* in the external field, but the *crimen maiestas* was directly concerned, for the legate C. Popilius Laenas had been prosecuted as a result of the disaster (p. 38). Furthermore, it so

⁶ Which Rambaud (114) denies, holding that it was only by a "déformation géographique" that Caesar was able to present the distance between the Santones and Tolosates as negligible.

happened that Cassius had had some success against the Tigurini before the disaster, in the region of Tolosa (Oros. 5.15.23-4). The linking of Tolosa and disaster had other evocations, for men would not have forgotten the curse of the Tolosan gold and the calamity of Arausio (pp. 42, 39).

Caesar again exposed himself to a charge of *maiestas* when he left his province in the campaign against Ariovistus. His defence was that when the Germans had occupied the whole of Gaul they would not refrain "quin . . . ut ante Cimbri Teutonique fecissent, in provinciam exirent atque inde in Italiam contenderent, praesertim cum Sequanos a provincia nostra Rhodanus divideret"⁷ (B.G. 1.33.4). The reference to the Cimbrian and Teutonic threat which had been repelled by Caesar's kinsman, Marius (B.G. 1.40.5), strongly suggested *maiestatem auxi*, for that threat had nearly meant the end of *maiestas populi Romani*. Caesar also implied that as Marius had admittedly acted lawfully, his own conduct should not be called in question. There was probably a further implication of *maiestas* in the fact that Ariovistus had been received into the *amicitia* of the Roman People (1.35.2, 40.2, 42.4, 44.5). This suggests a *maiestas* clause; and indeed that there was a treaty of this type with Ariovistus seems to follow from the *beneficia* and *praesidium* which he had, or was entitled to expect, from Rome (1.42.3, 43.4-5, 44.5). The treaty was contracted in Caesar's consulship and, it is strongly implied, through his good offices (1.35.2, 40.2, 42.3). There was also a *maiestas* treaty between Rome and the Aedui, entered into in 61 B.C. (1.33.2, 35.4, 43.6-8). Mutual aid against aggression was a feature of a *maiestas* treaty (Täubler, 47), and Ariovistus pinpointed the mutual failure to observe this provision of the Aeduan treaty when he taunted Caesar with the fact that the Aedui had not assisted Rome against the Allobroges, nor Rome the Aedui against the Sequani and Ariovistus (1.44.9).

Caesar's case therefore was, in effect, that he had compelled Ariovistus *maiestatem comiter conservare*, and had given the Aedui the benefits to which their *maiestas* treaty with Rome

⁷ From leaving the province and pressing on to Italy (as the Cimbri and Teutoni had done), particularly since the Rhone was the border between Sequanian territory and our province. (tr.)

entitled them. But Ariovistus, who prided himself on his knowledge of affairs (1.44.9), aimed a shrewd blow when he said (inaccurately): "Numquam ante hoc tempus exercitum populi Romani Galliae provinciae finibus egressum"⁸ (1.44.7). He was probably prompted to this by the Optimate circles in Rome who had been negotiating with him with a view to securing Caesar's death (1.44.12; cf. Schmittlein, 6). The same source may have inspired the panic which, according to Caesar, seized his army at the prospect of fighting the Germans (1.39ff). Dio (38.35.2, 37.1, 41.1) says that the soldiers declared that they wanted no part of a war which was neither justified nor authorized by Senate or People, and was merely designed to aggrandize Caesar. Caesar himself reveals the true nature of the 'panic', for he found it necessary to point out to his troops that in previous cases where armies had disobeyed their commanders, "aut male re gesta fortunam defuisse aut aliquo facinore comperto avaritiam esse convictam: suam innocentiam perpetua vita . . . esse perspectam"⁹ (1.40.12). This plea is very carefully framed. "Male re gesta" was a typical form of *maiestas* under the *Rechenschaftsprozess* in respect of unsuccessful commanders (pp. 22, 38), and here Caesar makes two suggestions. Firstly, he implies that fortune has not deserted him, and that therefore there can be no question of *male re gesta*. Secondly, he suggests that it would have amounted to *aliquid facinus* only if *avaritia* had been proved. This is a clear reference to Caesar's own *lex Julia repetundarum*, which dealt with the same category of unauthorized departure from a province as the *lex Cornelia maiestatis* (pp. 85-7). In this way Caesar manages to avoid dealing with the legal position arising out of the mere fact that he had left his province, quite apart from *avaritia*; that is, a *maiestas* departure under the *lex Cornelia*. Caesar probably knew that *avaritia* could not be alleged against him, and tried to show that he had therefore been guilty of no crime. The fact that Caesar found it necessary to put the matter in this form suggests that Optimate agents

⁸ Never before had a Roman army left the province of Gaul. (tr.)

⁹ They had handled matters badly and fortune had deserted them, or wrongdoing had been detected and they had been convicted of avarice. But in his case his whole life attested his innocence. (tr.)

had contrived to whip up a good deal of feeling against his unauthorized acts. They could not have done this unless there had been a solid substratum of truth to the allegations which they put about against Caesar. His own soldiers, for example, would not have been impressed by mere hearsay and insinuation.¹⁰

Sufficient precedents having been established, further extra-provincial wars did not demand much apology. The entry into Remian territory (*B.G.* 2.5.4) was justified by the bare report that the Belgae were conspiring against the Roman People (2.1.1), and the reminder that they had been strong enough to repel the Teutons and Cimbrians (2.4.2). The sale of 53,000 Aduatuci into slavery (2.33.7) is reminiscent of the crime of Ser. Sulpicius Galba (p. 23), for in the case of the Aduatuci as well there was ill-treatment after an unconditional surrender (2.31.2, 32.3-4).

Caesar's massacre of the Usipetes and Tencteri in 55 B.C. set a new highwater mark for this form of *maiestas*. The strong attack of Rambaud (118-22; cf. Taylor, *Politics* 142) finds its surest confirmation in the attitude of Caesar's friends: Rice Holmes (*Gaul* 194) admits that Caesar's conduct urgently demands an explanation, while Gelzer (116-7) uncomfortably limits himself to a bald précis of Caesar's own narrative, but admits (119 n.119) that Caesar exaggerated the perfidy of the Germans in order to meet the accusations which were being levelled at him when *Bellum Gallicum* was published in 51 B.C. Rambaud (118-22) shows that Caesar decided at the outset to make war on the two migrant tribes (*B.G.* 1.6.1, 5; 1.7.1), and had plausible reasons for his decision (4.2.2-5; 4.4, 5; 4.6.2-4). It certainly seems that some drastic special pleading was needed for the annihilation of some 430,000 people,¹¹ particularly in view of the desperate efforts which the enemy had made to come to terms. Two German embassies which

¹⁰ On the whole question of Caesar's justification of his campaign against Ariovistus see particularly Schmittlein 6-9, 17, 22.

¹¹ The figure is Caesar's own: *B.G.* 4.15.1-3; cf. Appian, *Celt.* 18; Plutarch, *Caes.* 22.3. Collins (*Review of Rambaud* 531-2) criticizes Rambaud (283-93) for suggesting that Caesar's *clementia* was a mere device to win popularity. But Collins walks warily around the corpses of the Usipetes and Tencteri.

tried to negotiate with Caesar (4.7.2-9.2; 4.11.1-5) did not get a fair hearing, for Caesar 'knew' that they were merely delaying in order to bring up their cavalry (4.9.3, 11.4). Rambaud (118-9) well analyses the sleight of hand which followed. Although Caesar refused the second embassy a *tridui spatium* (4.1.3-5), when 800 German horse routed some 5,000 of Caesar's cavalry the latter were off their guard because the Germans had *requested* a truce.¹² The 'proven' perfidy of the Germans enabled Caesar to justify the arrest of the third embassy on the ground that it was simply a further attempt at treachery (4.13.4-6). There followed the sudden descent on the German camp and the massacre.¹³ Caesar clearly violated the *ius legionis* and was liable to prosecution, as Saturninus had been in 101 B.C. when he ill-treated the envoys of Mithridates.¹⁴ The indictment would probably have alleged *maiestas* in two respects—the breach of the *ius legionis* and the massacre, for it was *maiestas* so to act "ut ex amicis hostes populi Romani fiant"¹⁵ (Dig. 48.4.4).

The crossing of the Rhine and the expedition to Britain brought the usual pleas in mitigation (*B.G.* 4. 16, 17.1, 20), but Caesar's Commentaries carefully omit all reference to the unfavourable reaction provoked by the campaigns of 55 B.C.¹⁶ The precise chronology of the events making up the reaction is not certain. Suetonius (*Caes.* 24.3) says: "Nec deinde ulla belli occasione, ne iniusti quidem ac periculosi abstinuit, tam foederatis quam infestis ac feris gentibus ultro lacescit, adeo ut senatus quondam legatos ad explorandum statum Galliarum mittendos decreverit ac nonnulli dedendum eum hostibus censuerint."¹⁷ Suetonius goes on to mention the frequency with which thanksgivings were voted after Caesar's campaigns.

¹² *Caes. B.G.* 4.12.1. Appian (*Celt.* 18) and Plutarch (*Caes.* 22.2) follow Caesar, but Dio, 39.47.3 speaks only of a small Roman detachment.

¹³ *Caes. B.G.* 4.14, 15. Plutarch cynically remarks (*Caes.* 22.2) that Caesar acted thus τὴν πρὸς οὕτως ἀπίστους καὶ παρασπόνδους πίστιν εὐθήθειαν ἡγοούμενος. (Considering it foolish to show good faith towards such dishonest truce-breakers.)

¹⁴ Diod. p. 631. Cf. Mommsen, *Staat* 2.1.112.3; Rambaud, 118; Broughton, 2.219.

¹⁵ That the friends of the Roman People became their enemies. (tr.)

¹⁶ Dio (39.53.1) was not impressed with the British expedition, which brought nothing to Caesar or Rome except the reputation of having gone there.

It is known that after the campaigns of 55 the Senate voted a 20 days' *supplicatio*.^{17a} It also seems clear that the proposed noxal surrender of Caesar which Suetonius attests is that which was proposed by Cato.^{17b} Caesar's reaction to Cato's proposal was an abusive letter to the Senate, which illustrates his "way of losing his good sense when he dealt with Cato" (Taylor, *Politics* 142). Cato calmly disposed of Caesar's abuse, and proceeded to analyse his motives, warning that the danger was not the Germans and Celts, but Caesar himself (Plut. *Cat. Min.* 51.2-4). The problem is to determine at which debate Cato moved his proposal for a noxal surrender. Plutarch (*Caes.* 22.3; *Cat. Min.* 51.1) says that it was moved as an amendment to the proposed thanksgiving, which gives no difficulty. But Suetonius implies that the appointment of a senatorial commission was approved in the same debate as that at which Cato's proposal for a *noxae deditio* was made. If the accounts of Plutarch and Suetonius were combined, it would mean that in the same debate there were proposals for a noxal surrender, a *supplicatio*, and a senatorial commission, and that the latter two were carried. But it is scarcely possible that the Senate passed a resolution which partly commended Caesar, and partly condemned him.

If the thanksgiving debate was not the occasion when the commission was decreed, is it necessary to assign the latter to late 55 B.C. at all? At first sight Plutarch (*Cat. Min.* 51.2-4) seems to imply that the commission was decreed during the debate on Caesar's letter, and therefore almost contemporaneously with the debate on a *supplicatio* and on Cato's amendment; Cato found considerable support, and Caesar's friends regretted that by reading the letter they had furnished Cato with ammunition for an accusation. But in conclusion Plutarch observes that the Senate took no action, except to note the

¹⁷ Thereafter he did not neglect any opportunity of waging war, even when it was unjust and dangerous. He gratuitously attacked so many allied as well as hostile peoples that the Senate on one occasion decreed that envoys be despatched to investigate the state of affairs in Gaul, and some senators proposed that he be surrendered to the enemy. (tr.)

^{17b} *Caes. B.G.* 4. 38.5; *Dio* 39. 3.2; *Plut. Caes.* 22.3, *Cat. Min.* 51.1.

^{17a} *App. Celt.* 18; *Plut. Caes.* 22.3, *Cat. Min.* 51.1.

advisability of appointing a successor to Caesar. Rambaud (132-3) rejects a date as early as 57 or 56 B.C. for the senatorial commission, arguing that Cicero would have mentioned criticisms of Caesar in his *De Provinciis Consularibus* if there had been talk of a commission at the time, and suggests 52 or 51, on the ground that the Senate intervened only "lorsque la conquête sembla perdue". But Cicero's silence need be no more than skilled advocacy; where details were embarrassing it was more convenient to make out only a general case. The real question seems to be: What are the implications of Suetonius' "legatos . . . mittendos" (*Caes.* 24.3)? Suetonius' statement should be considered in the light of the assertion of Dio (39.25.1) that the legates decreed to Caesar by the Senate after Luca constituted a senatorial commission to reorganize the conquered province. Gelzer (112.84) believes that "imperatorii decem legatos decrevit" (*Cic. Balb.* 61) may support Dio, but concludes that the decree attested by Dio was one that validated those provisions of the *lex Vatinia* which authorized Caesar to appoint legates. It is possible, however, that Suetonius (*loc. cit.*) in fact corroborates Dio. His "legatos ad explorandum statum Galliarum mittendos" may well mean a commission sent by the Senate after Luca, in order to have a report available on the complaints against Caesar, before considering the proposal that Caesar be authorized to pay his legions with State funds (*cf. Cic. Fam.* 1.7.10; *Prov. Con.* 28; *Balb.* 61). There were precedents for senatorial intervention against proconsuls who were guilty of *maiestas*: in 310 B.C. the Senate sent two tribunes to warn Q. Fabius not to leave his province, and in 204 B.C. a delegation interviewed Scipio Africanus *quod de provincia decessisset iniussu senatus*¹⁸ (*Livy*, 9.36.14; 29.19.6). The suggested reconciliation of Dio and Suetonius seems to follow from the order of events in Suetonius: the conference of Luca (*Caes.* 24.1), the raising of legions at Caesar's expense (24.2), and the senatorial commission (24.3) which investigated the complaints against Caesar. As the commission recommended the grant of a *stipendium* to Caesar, it is to be assumed that he managed to persuade it that

¹⁸ In regard to his having left his province without the Senate's authority.
(tr.)

he had left his province for good cause. But the massacre of the Usipetes and Tencteri gave Cato a fresh opening, and the whole issue was again canvassed in the debates of 55 B.C. on a *supplicatio* and on Caesar's letter attacking Cato.

The legislative struggle during the latter years of Caesar's Gallic command turned largely on whether he would have to face his accusers. The crucial question was whether the Optimates would get hold of Caesar before Caesar got hold of his second consulship.¹⁹ The *lex Pompeia Licinia* of 55 B.C. extended Caesar's command, and the Ten Tribunes' Law of 52 authorized him to stand as a candidate for the consulship *in absentia*.²⁰ Whether Caesar intended to become consul in 49 or 48 is not crucial here; the important point is that the practical result of the legislation in his favour would have been immediate continuity between his proconsulship and his consulship, and that therefore there would have been no interval during which he could have been prosecuted.^{20a} This was prejudiced by two laws introduced by Pompey in 52 B.C., the *lex de iure magistratuum*, which reversed the effect of the Ten Tribunes' Law,²¹ and the law authorizing the allocation of provinces to former consuls and praetors who had not previously received an allocation (Dio, 40.56.1).

It was in these circumstances of uncertainty as to his availability for prosecution that Caesar published *Bellum*

¹⁹ "Caesar's great concern was to make sure that he could move from his proconsulship directly into his consulship, so that he would not be accused in the courts". Taylor, *Politics* 150. Cf. Syme, 48; Gelzer, 138, 154-5.

²⁰ Suet. *Caes.* 24.1; 26.1; Vell. 2.46.2; Plut. *Crass.* 15.7; *Pomp.* 52.4; *Caes.* 21.6; Appian, *B.C.* 2.17-8; Dio, 40.51.2; *Caes. B.C.* 1.9.2; 1.32.3; Cic. *Att.* 8.3.3. For an intelligent approach to the much-debated *Rechtsfrage* see Cuff (*passim*), whose theory of an ambiguity in the enabling law, which both sides exploited, offers a reasonable solution to the problem.

^{20a} Cf. Gelzer, 137f., 154, 160.328; Taylor, *Politics* 150f.; Cuff, 464, 468.

²¹ Suet. *Caes.* 28.2-3; Dio, 40.56.1-3. The confidence expressed by Gelzer (139.218) and Cuff (463.67) in Pompey's honesty of purpose is misplaced. This piece of political chicanery (cf. Syme 40) was aggravated by the comedy of the purported amendment after the adoption of the law (p. 96 n.), for Pompey cannot have been ignorant of the *lex Licinia et Iunia*. Perhaps he felt that in the case of the agrarian law of 59 B.C. (pp. 96-7) Caesar and Vatinius had created a precedent for his own breach of the *maiestas* law by tampering with a *lex* which had already been lodged in the *aerarium*.

Gallicum in 51 B.C.²² Apart from the legislative manoeuvres, recent events would not have encouraged Caesar to believe that old wrongs had been forgotten. In 52 B.C., after the conviction of Milo, the Optimate "Herrschaft in den Gerichtshöfen" was able to secure the condemnation of a number of Clodians (Gelzer, 139). This is linked to the fact that Cato was still threatening to prosecute Caesar as soon as his army was disbanded, and it was being openly said that if he returned as a *privatus* he would, like Milo, be tried by a *quaestio* surrounded by armed men (Suet. *Caes.* 30.3). Taylor believes, on the basis of Sallust,²³ that the threat to Caesar was trial under Pompey's *lex de ambitu*; her argument is that in *Epistula ad Caesarem* (2.4.2) Sallust refers to trials under the *leges Pompeiae* of 52 B.C., and then immediately (2.4.3-4) turns to the proceedings contemplated against Caesar. The argument is not persuasive. If the trials of 52 B.C. are to furnish the criterion, it should be noticed that they were *de vi* rather than *de ambitu*, and were brought under both the Pompeian and the Plautian laws *de vi* (Ascon. 54-5C). And Sallust himself (2.4.3) gives a clear indication that it was *maiestas* rather than *vis* which was in issue in Caesar's case: "Quein optatius habent ex tua calamitate periculum libertatis facere quam per te populi Romani imperium maximum ex magno fieri."²⁴ The Optimates tried to prosecute Caesar for *maiestas* early in 58. They continued trying to bring him to book in the years which followed, and according to Suetonius (*Caes.* 30.3,4) the basis of their attack remained Caesar's actions during his first consulship. Caesar's breaches of the *lex maiestatis* were on an unprecedented scale during his proconsulship, and his opponents exhausted their ingenuity in their attempts to call him to account. It is inconceivable that in 51 B.C. all this

²² See Rambaud (9-12 and *passim*) on the date. Cf. Gelzer, 94 and Taylor, *Politics* 157.

²³ *Ep. ad Caes.* 2.4.2-4. Taylor (*Politics* 156, 234. 57-8) accepts this document as genuine, and dates it to 51 B.C. Gelzer (106 and n.357) accepts the letter as Sallustian, but dates it to 50 B.C. Syme (52.3, 248, 460) vacillates between doubt as to its authenticity and admiration of its contents. Laistner (169.4) rejects both the Sallustian *Suasoriae*.

²⁴ Indeed they would rather endanger liberty by securing your downfall than have the empire of the Roman People aggrandized through your agency. (tr.)

petered out in a feeble threat to prosecute him for the relatively minor crime of *ambitus*. Finally, where is the evidence that Caesar breached the *lex de ambitu* at all, as against the overwhelming mass of his violations of the *lex maiestatis*?

Gelzer (94; cf. 119) believes that in *Bellum Gallicum* Caesar effectively disposed of the proposed charges against him by his masterly exposition of his and his army's achievements. Caesar himself did not share Gelzer's optimism, for he said at Pharsalus that despite his achievements he would have been condemned if he had not sought the aid of his army.²⁵ Suetonius (*Caes.* 30), discussing various theories as to the reasons for the civil war, goes so far as to suggest that Caesar was driven to war by his dread of having to account for the irregularities of his first consulship.

²⁵ Suet, *Caes.* 30.4. Lucan, *Phars.* 7.304-5, puts even grimmer words into Caesar's mouth before the battle: "Caesareas spectate cruces, spectate catenas, et caput hoc positum rostris, effusaque membra" (Behold crosses for Caesarians, and fetters, and this head affixed on the dais, and limbs in confusion).

“Ego et Populus Romanus”

It is suggested that Caesar's fear of a prosecution for *maiestas* was so great that he could not bring himself to rely on a mere presentation of the facts in *Bellum Gallicum*, even if they were put in the light best calculated to support one or other of the legal defences open to him. What he in fact did in *Bellum Gallicum* was to introduce a technique which, as amplified in *Bellum Civile*, was intended to furnish the complete and final answer to any possible charge of *maiestas* which might be preferred against him. Caesar's approach was very subtle, but also very simple. A plea of *maiestatem auxi* might or might not succeed, as long as there was a clear distinction between the *maiestas* alleged to have been augmented and the person claiming credit for the augmentation. But absolution would be placed beyond doubt if men could be persuaded that the distinction was no longer valid, that Caesar somehow expressed in his person the *maiestas* of the Roman People.

The vehicle selected for the conveyance of this impression was *dignitas Caesaris*. The distinction between *dignitas* and *maiestas* has already been mentioned (p. 10), and it should be noticed that there was a fairly close parallel between the two concepts, for *dignitas* expressed within the internal political sphere a concept not unlike that which *maiestas* expressed externally. The two concepts intersected in expressions such as *dignitas rei publicae*, which was merely a synonym for *maiestas populi Romani* (cf. *Dig.* 49.15.7.1). Caesar set out to suggest another point of intersection. By constant reiteration of his *dignitas*, in juxtaposition to references, direct or indirect, to *maiestas populi Romani*, he created the illusion that there was a special relationship between the latter concept and

dignitas Caesaris. His method not only induced defeatism in his opponents and elation among his friends, but continues to mislead scholars 2,000 years later.¹ Drexler (209-10) uses language which clearly postulates a technical *maiestas* shift from the Roman People to Caesar:

Das höchste Geschenk, das der Gefolgschaftsführer seinem Gefolgsmann gibt . . . ist dies, dass er ihn dienend an seiner *dignitas* und *maiestas* teilhaben lässt, dass er die *homines tenuissimi* zu einer höheren Existenz erhebt . . . Gewiss hätte in Rom das Ganze, an das man sich anschliessen muss, die *res publica* sein sollen, aber man vergesse nicht, dass der kleine Mann niemals in einem Immediatverhältnis zu ihr gestanden hat. In Caesar erhebt sich dann die *dignitas* eines einzelnen zur *maiestas*, und sein Sieg setzt an die Stelle der *maiestas rei publicae* oder *populi Romani* die seine.²

Before examining the evidence it would be well to consider how a technical *maiestas* shift to Caesar would have taken place. Drexler's "dignitas erhebt sich zur maiestas" is well chosen, for if it is remembered that *maiestas* was a relationship, and not an attribute or a quality, it will be readily understood that its acquisition was not a matter for a specific grant. It would not have happened that at any given time any organ of the Roman State would have declared that Caesar expressed in his person the *maiestas* of the Roman People. A *maiestas* relation-

¹ Cf. Collins's anecdote (*Review of Rambaud* 527) of the scholar who, told that Rice Holmes had been "bewitched" by Caesar, replied: "Wen hat er nicht bezaubert?" A wise observation, for it is not easy to escape the magic of the omnipotent Caesar of the classroom.

² The greatest gift that the leader of a clientship could give his client was to permit him to participate in his *dignitas* and his *maiestas*, to raise the *homines tenuissimi* to a higher existence. No doubt in Rome the totality to which allegiance was owed was the *res publica*, but it should not be forgotten that the common man never stood in an immediate relationship to this. In Caesar the *dignitas* of an individual was elevated to *maiestas*, and his victory substituted his own *maiestas* for that of the *res publica* or the *populus Romanus*. (tr.) Gelzer (94) speaks of "die tantae res gestae, die ihm eine unantastbare dignitas eingebracht haben", and says (139) that Caesar's power "war zu einer autonomen Grösse geworden". Cf. Taylor, *Politics* 163: "Caesarism meant the identification of the Roman People with Caesar".

ship was recognized *because it in fact existed*. The ally who bound himself to respect Roman *maiestas* did so because in fact he was the *minor* in a *maior-minor* relationship. A *lex maiestatis* did not create *maiestas populi Romani*; its purpose was to give legal protection to the *maiestas* which the Roman People in fact possessed. It was necessary to bind all members of the Roman community to respect that *maiestas*, and in a sense a *lex maiestatis* was a *maiestas* treaty. If, therefore, Caesar had *in fact* reached such a position of pre-eminence that he was patently the *maior vis-à-vis* the Roman People and its magistrates, then there was a *maiestas* shift. But although the fact of Caesarian *maiestas* could exist independently of any legislative pronouncement, its existence would have had two necessary consequences. There would have had to be a *lex maiestatis* to give legal recognition to the new relationship and to protect it. For example, it would have been meaningless to prosecute departure from a province *iniussu populi aut senatus* under the *lex Cornelia*, when the crime could be committed only by a departure *iniussu Caesaris*. Secondly, an ally would not have bound himself *maiestatem populi Romani comiter conservare*, when in fact he was obliged to respect *maiestatem Caesaris*. Evidence such as the survival of the expression *maiestas populi Romani* in Caesar's *lex Julia maiestatis* (pp. 155-68), or of a Caesarian *maiestas* treaty binding the ally to respect *maiestatem populi Romani*, would go against a technical *maiestas* shift to Caesar. Conversely, Drexler's hypothesis would need no further verification if *maiestas Caesaris* were attested for the *lex maiestatis* or for a *maiestas* treaty.

Caesar was obsessed with his *dignitas*. During his praetorship L. Vettius charged him before Novius Niger, the quaesitor investigating those implicated in the conspiracy of Catiline. Caesar reacted with extreme coercive measures, confiscating Vettius' goods and imprisoning him. Novius was also imprisoned for allowing a superior magistrate to be brought before his court.³ It was also during his praetorship that Caesar discovered that he was able to solicit widespread support from the common man in defence of his *dignitas*. When the Senate suspended his praetorship, "multitudinem . . . operam sibi in adserenda dignitate tumultuosius pollicentem

conpescuit" ⁴ (Suet. *Caes.* 16.2). It was probably at this time that Caesar first appreciated the value of his *dignitas* as an instrument of propaganda, for in 51 B.C. Sallust still looked back to the time when Caesar "in praetura inimicorum arma inermis disiecit" ⁵ (*Ep. ad Caes.* 2.2.4).

The introduction of Caesar's personal concerns in *Bellum Gallicum* is made with studied casualness. After noticing that the Tigurini had paid the penalty for having been the first to cause a signal disaster to the Roman People (*B.G.* 1.12.6), Caesar says: "Qua in re Caesar non solum publicas sed etiam privatas iniurias ultus est, quod eius soceri L. Pisonis avum, L. Pisonem legatum, Tigurini eodem proelio quo Cassium interfecerant" ⁶ (1.12.7). Applying the tests laid down by Rambaud (92-3), this statement is found to be part of an insertion at the time of composition. There is a break in logical continuity between the defeat of the Tigurini (1.12.3) and the resumption of the factual narrative (1.13.1), marked by a characteristic phrase—"hoc proelio facto"—referring back to the section immediately preceding the insertion. The effect of the insertion was carefully calculated. Revenge for the *insignis calamitas* suffered by the Roman People might support a plea of *maiestatem auxi*, but on the face of it revenge for Caesar's personal wrongs was not relevant to the issue. Caesar was not, however, given to irrelevancies. This passage was the first of

⁴ Suet. *Caes.* 17. Caesar was probably entitled to complain that an inferior magistrate had received a charge against a superior. Cf. Mommsen, *Straf* 352 and n.1; *Staat* 1.705 and n.4; 706; Gelzer, 53 and n.126. But there was probably more to it, for on the termination of his praetorship Caesar hurried off to Spain without even waiting for senatorial confirmation of his appointment (Suet. *Caes.* 18). As Suetonius (loc. cit.) caustically remarks, the reason was either Caesar's fear of being impeached while still a *privatus*, or his anxiety to respond to the Spanish appeal for aid. It would seem that an urgent desire to be elsewhere than within the jurisdiction of a criminal court was a not uncommon characteristic of Caesar.

⁵ He restrained the populace when they riotously offered to help him to assert his dignity. (tr.)

⁶ In his praetorship (he) dispersed the attacks of his opponents without resort to force. (tr.)

⁷ In this matter Caesar avenged not only public but also private wrongs, because the Tigurini had killed the legate L. Piso (grandfather of his father-in-law L. Piso) in the battle in which Cassius had perished. (tr.)

numerous suggestions designed to condition men's minds to the notion that the protection of *maiestas populi Romani* went hand in hand with the protection of Caesar's *dignitas*.

It would tend to narrow the gap between *dignitas* and *maiestas* if Caesar and the Roman People had the same enemies and friends. Therefore Dumnorix hated "Caesarem et Romanos"⁷ (1.18.7), while his brother Diviciacus entertained "summum in populum Romanum studium, summam in se voluntatem"⁸ (1.19.2). In response to the entreaties of Diviciacus, Caesar agreed to forgive Dumnorix "et rei publicae iniuriam et suum dolorem"⁹ (1.20.5). The partnership between Caesar and the Roman People became progressively more close-knit. Gaul would be subjugated by Ariovistus "nisi quid in Caesare populoque Romano sit auxilii"¹⁰ (1.31.14), and the Germans could be deterred "vel auctoritate sua . . . vel nomine populi Romani"¹¹ (1.31.16). The subjugation of the Aedui by Ariovistus was "in tanto imperio populi Romani turpissimum sibi et rei publicae"¹² (1.33.2). *Benefica* being in the dispensation of the *maior* in a *maiestas* relationship (p. 9), it was convenient to mention that Ariovistus had been "tanto suo populi Romani beneficio adfectus"¹³ (1.35.2; cf. 1.42.3, 43.4-5); if he met Caesar's demands, "sibi populoque Romano perpetuam gratiam atque amicitiam cum eo futuram"¹⁴ (1.35.4). Caesar was persuaded that Ariovistus "neque suam neque populi Romani gratiam repudiaturum"¹⁵ (1.40.3). The *maior* owed military aid to the *minor*, therefore "neque suam neque populi Romani consuetudinem pati uti optime merentis socios desereret"¹⁶ (1.45.1).

⁷ Caesar and the Romans. (tr.)

⁸ The utmost goodwill towards the Roman People and towards Caesar. (tr.)

⁹ The wrongs to the State and his own grievances. (tr.)

¹⁰ Unless aid could be looked for from Caesar and the Roman People. (tr.)

¹¹ By his authority or by the renown of the Roman People. (tr.)

¹² In view of the greatness of the Roman Empire, a disgrace to Caesar and the State. (tr.)

¹³ Benefited by the beneficence of Caesar and the Roman People. (tr.)

¹⁴ He would win the eternal favour and friendship of Caesar and the Roman People. (tr.)

¹⁵ Would not reject the favour of Caesar or of the Roman People. (tr.)

¹⁶ Neither his practice nor that of the Roman People could tolerate the abandonment of most deserving allies. (tr.)

Ego et populus Romanus,¹⁷ which is such a consistent theme in *Bellum Gallicum* I, is entirely absent from Books II and III. This fact is significant. Book I sets out Caesar's defence to the great *maiestas* contraventions which attended the campaigns against the Helvetii and Ariovistus, and insinuations of personal *maiestas* were an essential part of that defence. The campaigns of 57 and 56 B.C. do not seem to have furnished Caesar's opponents with any new ammunition of note; indeed, a *supplicatio* was decreed at the end of the campaign season of 57 (2.35.4). *Ego et populus* was not used indiscriminately, but only for the serious business of refuting charges of *maiestas*. The *maiestas* graph for 55 B.C. took a sharp upward turn as a result of the massacre of the Usipetes and Tencteri, and the incursion into Germany, and *ego et populus* duly reappears in Book IV. Some of the cavalry of the Usipetes and Tencteri having taken refuge with the Sugambri, Caesar demanded the surrender of those "qui sibi Galliaeque bellum intulissent"¹⁸ (4.16.3). The Ubii considered that "tantum esse nomen atque opinionem eius exercitus . . . uti opinione et amicitia populi Romani tuti esse possint"¹⁹ (4.16.7). Caesar decided that to cross the Rhine in boats would be dangerous, "neque suae neque populi Romani dignitatis esse"²⁰ (4.17.1). The theme is absent from Books V,²¹ VI, and VII, for the campaigns of 54 to 52 had not added to the pending charges. It is noteworthy that on the only occasion on which Caesar uses the word *maiestas* in *Bellum Gallicum* (7.17.3), there is no attempt to bring *se* into conjunction with the People. The army suffered severe privations at Avaricum, but "nulla tamen vox est ab eis audita populi Romani maiestate et superioribus victoriis indigna"²² (although "superioribus victoriis" in the same passage as *maiestate* is suggestive).

¹⁷ I and the Roman People. (tr.)

¹⁸ Who had made war on Caesar and Gaul. (tr.)

¹⁹ Such were the renown and repute of his army that their security lay in the repute and friendship of the Roman People. (tr.)

²⁰ And would not befit his dignity or that of the Roman People. (tr.)

²¹ Except 5.7.2: Caution was needed against Dumnorix, "ne quid sibi ac rei publicae nocere posset" (Lest he injure Caesar and the State). But this is only an echo of the point made in 1.18.7.

²² Not a word did they utter unworthy of the *maiestas* and past victories of the Roman People. (tr.)

It is therefore postulated that for the period 58 to 52 B.C. Caesar used the suggestive theme *ego et populus* only when he was concerned to meet the threatened prosecution for *maiestas*. It is concluded that when he published *Bellum Gallicum* at the beginning of 51 B.C., his propaganda bureau²³ had not yet worked out the full implications of the equation: *dignitas Caesaris = maiestas populi Romani*. But a new approach became necessary. The forensic and legislative attack of the Optimates in 52 B.C. was followed in 51 by the attempts of the consul M. Marcellus to have Caesar prematurely superseded.²⁴ Linked to this was the attempt to bring the demobilization of Caesar's veterans under the Senate's jurisdiction (Cic. *Fam.* 8.8.7). It was against this background that the 'big build-up' of Caesar's *dignitas* began, in *Bellum Gallicum* VIII.²⁵ The partnership between *ego* and *populus* was now dissolved, or at best converted into a *societas leonina*. The only consideration which weighed with the Bituriges was "cum sibi viderent clementia Caesaris reditum patere in eius amicitiam"²⁶ (8.3.5). The threat to the Suessiones gave Caesar to consider "pertinere autem non tantum ad dignitatem sed etiam ad salutem suam . . . nullam calamitatem socios optime de re publica meritos accipere"²⁷ (8.6.2). Caesar's meaning could not have been plainer. The allies had rendered services to the State, but the requital of those services was a personal

²³ It is possible that the jurist C. Trebatius conceived Caesar's defence to the *maiestas* charges. He was appointed to Caesar's staff in Gaul through the influence of Cicero, whose protégé he was. Boissier, 232ff.; Schulz, *Legal Science* 43, 62. He must have had an astute legal mind, for he had *auctoritas maxima* under Augustus. *Inst.* 2.25pr. He seems to have been the only jurist on Caesar's staff, for Caesar thanked Cicero for having sent him Trebatius: "Negat enim in tanta multitudine eorum qui una essent quemquam fuisse qui vadimonium concipere posset" (Cic. *Quint. Frat.* 2.13.3). Perhaps the defence was the joint product of the brilliant mind of Curio and the legal skill of Trebatius.

²⁴ Cic. *Fam.* 8.8.5; Suet. *Caes.* 28.2; Hirtius, *B.G.* 8.53.1. On the issues of law see Cuff, 467, 469.

²⁵ The passages to be discussed were all taken by Hirtius from Caesar's despatches. See Rambaud (58-9) on the structure of Book VIII.

²⁶ The realization that Caesar's clemency made it possible to return to his friendship. (tr.)

²⁷ That it was material to his dignity and his security that disaster should not befall allies who deserved particularly well of the State. (tr.)

obligation resting on Caesar. This is not, of course, evidence of a *maiestas* shift unless it is shown that Caesar's pretension was generally accepted, but it is a clear indication of the strong *maiestas* line which was introduced in 51 B.C. The theme is pursued throughout Book VIII. It was found that Commius "coniurationem contra Caesarem facere"²⁸ (8.23.3). It was "proximum suae dignitatis"²⁹ to ravage the territory of Ambiorix (8.24.4). There are several other references to Caesar's dignitas in Book VIII (50.4; 52.4; 53.1). These, which refer to events in 50 B.C., derive from sources other than Caesar's despatches (cf. Rambaud, 59). But it seems that Caesar himself pressed his *dignitas* very hard that year, for Cicero said in January 49: "Atque haec ait omnia facere se dignitatis causa"³⁰ (*Att.* 7.11.1). An insinuation of *maiestas* could be made even by the casual use of a word in an extraordinary sense. Lucterius realized "quam inimicum deberet Caesarem habere"³¹ (8.44.5). Regularly, an external enemy was *hostis*, and *inimicus* was a personal political enemy (Taylor, *Politics* 7, 35; Syme, 288). Lucterius had been a lieutenant of Vercingetorix (7.5, 7.8) and took part in the revolt of 51 (8.30-35, 39). He should have been a *hostis*, but the insinuation was that Caesar's *inimici* were also the enemies of the State.

There can, of course, be no suggestion that in 51 or 50 B.C. there was in fact a *maiestas* shift to Caesar, despite the strongly suggestive propaganda of those years. Gelzer (94) may believe that Caesar's achievements in Gaul had given him "eine unantastbare dignitas", but this is precisely what Caesar wanted him to believe. Cicero hit the mark in February 49 when he said of the struggle between Caesar and Pompey: "Dominatio quaesita ab utroque est, non id actum beata et honesta civitas ut esset"³² (*Att.* 8.11.2; cf. Dio, 41.17.3). The previous month, discussing Caesar's claim that he was acting *dignitatis causa*, Cicero had asked: "Ubi est autem dignitas

²⁸ Was conspiring against Caesar. (tr.)

²⁹ Most appropriate to his dignity. (tr.)

³⁰ He says that he is doing all this for the sake of his dignity. (tr.)

³¹ What a bitter enemy he had in Caesar. (tr.)

³² Both seek supremacy, which does not make for a happy or upright State. (tr.)

nisi ubi honestas?"³³ (*Att.* 7.11.1). It is clear that Cicero regarded an attempt at *dominatio* as incompatible with *dignitas*. The point need not be laboured. There could be no question of Caesarian *maiestas* in fact, when the outcome of the struggle for mastery of the State was still unknown.

Drexler (209-10) bases his inference of a *maiestas* shift to Caesar on *Bellum Civile* 1.7.7 and *Bellum Africum* 45.3.³⁴ These are only two of a number of passages which may seem to suggest Caesarian *maiestas*, but before discussing these passages it should be pointed out that if they are found to be no more than an intensification of the line taken in *Bellum Gallicum*, their value as evidence of an actual *maiestas* shift, as opposed to suggestive propaganda, will be materially reduced. Furthermore, the complete absence of an outright assertion of *maiestas* by Caesar, or his contemporaries on his behalf, is not without significance. Drexler's case is weakened by the fact that Caesarian *maiestas* is at best a matter of inference.³⁵ If there had been a *maiestas* shift it would have been generally

³³ Can there be dignity without probity? (tr.)

³⁴ *Bellum Africum* 45.3 scarcely merits discussion. Scipio offers life and rewards to a party of captured Caesarians, if they will defend the Republic in concert with all the best elements (*Bell. Af.* 44.4). The centurion who acts as spokesman asks: "Egone contra Caesarem imperatorem meum, apud quem ordinem duxi, eiusque exercitum, pro cuius dignitate victoriae amplius XXXVI annos depugnavi, adversus armatusque consistam?" (Am I to take up arms against Caesar, my commander, under whom I held a command, and against his army, for whose dignity and victories I have fought for more than thirty-six years?) (45.3). This is surely no more than 'fighting talk' by an old campaigner. Cf. *Bell. Af.* 45.5: "Elige ex tuis cohortem unam quam putas esse firmissimam et constitue contra me; ego autem ex meis commilitonibus non amplius X sumam". (Choose the cohort that you consider the strongest and pit it against me and a mere ten of my comrades.) Dio (43.5.3.4; cf. 42.49.4) was not impressed. He says that Scipio's inability to win over Caesarians was merely due to the fact that instead of offering rewards he urged them to liberate the Senate and People. It was one thing for the Caesarians to emphasize cases of signal loyalty, but Caesar was hard put to explain the defections which occurred. For example, the mutiny at Placentia (Suet. *Caes.* 69; Dio, 41.26.1; Appian, *B.C.* 2.191; Lucan, *Phars.* 5.246) is not noticed in *Bellum Civile*. See also Rambaud (239-42) on Caesar's hedging regarding the defections among Curio's troops.

³⁵ When something analogous to a *maiestas* shift in fact occurred in the case of Augustus, he did not hesitate to say so. See pp. 228-9.

recognized, and there would not have been so much juggling with words. The subtleties of *dignitas* need not have been pressed if it had been transformed into *maiestas*. It is no answer to say that political expediency dictated allusion rather than direct assertion. If Caesar's hints had accurately conveyed his possession of *maiestas* his opponents would have received the message in any case, and would have found it no more palatable because it was indirect.

Bellum Civile introduces *dignitas Caesaris* with the complaint that Pompey "neminem dignitate secum exaequari volebat"³⁶ (1.4.4), a complaint which Caesar repeats at Ariminum,³⁷ contrasting his support of Pompey's *honor et dignitas* with the latter's attitude (1.7.1). Caesar's point is that mutual promotion of *dignitas* was a term of the first triumvirate (Florus 2.13.9-11), but if Drexler is right Caesar goes further than this when he says: "Hortatur, cuius imperatoris ductu VIII annis rem publicam felicissime gesserint plurimaque proelia secunda fecerint, omnem Galliam Germaniamque pacaverint,"³⁸ ut eius existimationem dignitatemque ab inimicis defendant. Conclamant legionis XIII quae aderat milites sese paratos esse imperatoris sui tribunorumque plebis iniurias defendere"³⁹ (1.7.7-8). Although Drexler does not develop his hypothesis, he would presumably say that the injury to the tribunes Antony and Cassius,⁴⁰ who possessed magisterial *maiestas*, fell under the *crimen maiestatis*. By linking his injuries to theirs Caesar brought himself within the ambit of *maiestas*. As magisterial *maiestas* was a mere derivative of

³⁶ Did not want anyone to equal him in dignity. (tr.)

³⁷ For Caesar's incorrect location of this speech at Ravenna see Rambaud, 134-5; cf. Gelzer, 176.399, 174.392.

³⁸ On which claim Rambaud (194) aptly remarks: "c'est confondre une partie . . . avec le tout".

³⁹ He reminded them that during the nine years of his leadership they had aggrandized the State, fought many successful battles, and pacified the whole of Gaul and Germany. He urged them to defend his reputation and dignity against his enemies. The soldiers of the thirteenth legion, there present, loudly expressed their readiness to fight because of the wrongs done to their commander and the tribunes. (tr.)

⁴⁰ Their expulsion from the Senate on the 7th January 49. Caes. *B.C.* 1.5.2, 5; 1.7.3ff.; Cic. *Phil.* 2.21.51; Plut. *Caes.* 31.2. But the expulsion may have been non-violent. Cic. *Fam.* 16.11.2; Dio, 41.3.2.

maiestas populi Romani, Caesar's placing of himself prior to the tribunes was a claim to the *maior* position *vis-à-vis* the Roman People and its magistrates. But the better view of this passage is simply that the tribunes gave Caesar "the one constitutional battle-cry with which they could supply their master, that the rights of the tribunes were being overborne" (Adcock, *CAH* 9.637). Indeed the ancients took a similar view.⁴¹

Bellum Civile 1.9.2 is crucial, because of a textual difficulty which modern authorities seem to have overlooked. L. Caesar and Roscius, having been sent by the Senate to negotiate with Caesar,⁴² told him that Pompey was acting *rei publicae causa*,⁴³ that he had always considered "*rei publicae commoda privatis necessitudinibus . . . potiora*".⁴⁴ They suggested to Caesar that he follow Pompey's example: "*Quoque pro sua dignitate debere et studium et iracundiam suam rei publicae dimittere neque adeo graviter irasci inimicis ut, cum illis nocere se speret, rei publicae noceat*"⁴⁵ (*B.C.* 1.8.3ff.). The suggestion to Caesar, then, was that he postpone his *dignitas* to the interests of the State. In effect the envoys squarely put the question as to how far he was prepared to go in pressing his *dignitas* in opposition to *maiestas populi Romani*.

Caesar's reply is given in *Bellum Civile* (1.9.2), and it is found that there are two vitally different versions of what he said. According to the Oxford and Teubner texts⁴⁶ his reply was: "*Sibi semper primam fuisse dignitatem vitaque potior-rem*."⁴⁷ This seems to be the reading on which several modern

⁴¹ Cic. *Phil.* 2.29.72; 2.22.53; Plutarch, *Caes.* 31.2 is particularly clear: τῆς βουλῆς Ἀντώνιον καὶ Κουρίωνα προπηλακίσαντες ἐξήλασαν ἀτίμως, τὴν εὐπρεπεστάτην Καίσαρι τῶν προφάσεων αὐτοὶ μηχανησάμενοι (By driving Antony and Curio ignominiously from the Senate they gave Caesar a most plausible excuse).

⁴² On Caesar's chronological distortion of the negotiations see Rambaud, 135-6.

⁴³ In the interests of the State. (tr.)

⁴⁴ The interests of the State before his own. (tr.)

⁴⁵ It also befitted Caesar's dignity to give up his furious zeal for the sake of the State, and not to be so bitter towards his enemies as to injure the State in the hope of injuring them. (tr.)

⁴⁶ R. du Pontet, Oxford 1900; A. Klotz, Teubner 2 ed., 1950.

⁴⁷ His dignity had always been his primary consideration and was dearer than life itself. (tr.)

authorities base important conclusions about Caesar.⁴⁸ The other reading is: "Sibi semper primam *rei publicae* fuisse dignitatem vitaeque potiore".⁴⁹ This version seems to have appeared in Oudendorp's edition of 1736, judging by later editors whose texts are based on Oudendorp.⁵⁰ The curious feature is that the editors who give one version seem to be quite unaware of the other. There is no notice of *rei publicae* in the apparatus criticus of the Oxford or Teubner editions, but on the other hand there is no suggestion in any of the 'Oudendorp' editions that these words ought to be deleted. The only critical note on this passage in the editions which have been consulted is that of Oberlinus (op. cit. 373), who observes: "Reip. primam f.d. Codd. quidam, Rempubicam primam fuisse dignitate." As Klotz and Du Pontet made their own recensions it might be assumed that there was an error in Oudendorp's recension, were it not for the fact that Oberlinus seems to have seen some of the MSS. independently.

If Oudendorp's version is the right one, this passage severely damages the hypothesis that Caesar's various allusions in *Bellum Gallicum* and *Bellum Civile* were in fact a claim to personal *maiestas*. As *dignitas rei publicae* was simply a synonym for *maiestas populi Romani* (p. 118), it follows that Caesar, when obliged to say unequivocally where his *dignitas* stood in relation to the State, retreated and acknowledged the People's *maiestas*. Even if Klotz and Du Pontet have the right reading the position is not materially different, for in the context Caesar does not make an outright assertion of personal *maiestas*. After stating his attitude on his *dignitas* he goes on to say: "Doluisse se quod populi Romani beneficium sibi per contumeliam ab inimicis extorqueretur, cuius absentis rationem

⁴⁸ Syme, 48; Taylor, *Politics* 163, 236.4; Rambaud, 145; Gelzer, 52, 83, 94 and n.8; Balsdon, *Auctoritas* 45.

⁴⁹ The dignity of the State had always been his primary consideration and was dearer than life itself. (tr.)

⁵⁰ Ier. Iac. Oberlinus, *C. Iulii Commentarii de Bello Gallico et Civili: E Rescensione Francisci Oudendorpii*, Editio Nova Lipsiae in Libraria Weidmannia, 1819; Joannis Dymock, *Caii Iulii Caesaris Opera Omnia*, Editio Decima Sexta, Edinburgi, 1844; Oxford Pocket Classics, Oxford 1890; A. G. Peskett, Loeb ed., 1914. Du Pontet and Klotz notice a number of Oudendorp's readings, and Oudendorp's 1736 edition was seen by Du Pontet.

haberi proximis comitiis populus iussisset. Tamen hanc iacturam honoris sui rei publicae causa aequo animo tulisse"⁵¹ (1.9.2-3). The People's *maiestas* is acknowledged in *populi Romani beneficium*, for the recipient of *beneficia* typically occupied the *minor* position in a *maiestas* relationship (p. 5). This acknowledgement is coupled with a further advance in the technique which was introduced in *Bellum Civile* (1.7.8). There, by basing his case on *tribunorum plebis iniurias*, Caesar passed from defending himself against charges of *maiestas* to levelling such charges at his opponents. He does the same in the present passage. It would have been a simple interpretation to bring *iacturam honoris sui*, the frustration of something (*quod*) *populus iussisset*, under the *crimen maiestatis*. If it was *maiestas* for Cato to decline an office to which the People had appointed him (p. 104 n.31), it was equally *maiestas* to frustrate Caesar's exercise of a privilege which the People had granted him.⁵²

There is also a recognition of the People's *maiestas* in "rei publicae causa" (1.9.3, 5), and in "libera comitia atque omnis res publica senatui populoque Romano permittatur"⁵³ (1.9.5). The latter passage is echoed by "liberam et sui iuris civitatem"⁵⁴ (*B.G.* 8.52.5), and the expression *sui iuris* is significant. A mere *libera civitas* was not necessarily independent, for *libertas* was not inconsistent with a dependent position. The client and the *filiusfamilias* were free; so was the *minor* in a *maiestas* relationship.⁵⁵ But *libera et sui iuris* has a special meaning, for the legal term *sui iuris* implies that the State should be its own unfettered master.

Caesar reverted to his defence in *Bellum Civile* (1.22.5): "Se non maleficii causa ex provincia egressum, sed uti se a

⁵¹ He resented the fact that his enemies had insultingly wrested from him the benefit of standing at the next election *in absentia*, which the Roman People had granted him. Yet for the sake of the State he had borne this loss of preferment with equanimity. (tr.)

⁵² Assuming, of course, that there was a frustration. See Cuff (471) for the irreconcilable views of the *Optimates* and *Populares* on the *Rechtsfrage*.

⁵³ Free elections and control of the State should be handed over to the Senate and the Roman People. (tr.)

⁵⁴ A free state and its own master. (tr.)

⁵⁵ Kunkel 340. Cf. Cicero, *Off.* 3.85: "Civitatemque (sc. Romanam) non modo liberam sed etiam gentibus imperantem".

contumeliis inimicorum defenderet, ut tribunos plebis in ea re ex civitate expulsos in suam dignitatem restitueret, ut se et populum Romanum factione paucorum oppressum in libertatem vindicaret."⁵⁶ The implication was that defence of the tribunes' *maiestas* justified the crossing of the Rubicon (cf. 1.7.8). Caesar, realizing the doubtful validity of this extreme application of the *maiestatem auxi* rule, sought to bolster up his case, but in effect he merely repeated previous arguments. The insinuation in "uti se a contumeliis inimicorum defenderet" is no more significant than the similar suggestion which he made in partial justification of his departure from his province against the Helvetii (pp. 121-22).⁵⁷ The present passage leads Taylor (*Politics* 163) to infer an identification of the Roman People with Caesar, but the repeated use of *se et populum* in *Bellum Gallicum* I was merely a general defence to the *crimen maiestatis*, and there is no need to attribute any greater significance to it in *Bellum Civile*.

Caesar, addressing the Senate in April 49, added to his previous arguments the mild contention that he sought only what was available to every citizen (1.32.2),⁵⁸ but promptly spoilt the effect by committing the crime of *sacrilegium*, when he emptied the *aerarium sanctius* despite the veto of the tribune L. Metellus, and the crime of *maiestas*, when he threatened violence to Metellus.⁵⁹ This incident cost Caesar so much popular goodwill that he left Rome without carrying out his intention of addressing a *contio* (Cic. *Att.* 10.4.8; *Fam.* 8.16.1). He had not won general acceptance of his position from the urban plebs or the Senate,⁶⁰ despite his earlier claim that on a free vote the Senate would have supported him (*B.G.* 8.52.3; cf. *B.C.* 1.1.3; 1.2.6; 1.3.5). Even after the first Spanish

⁵⁶ He had not left his province for an improper purpose, but to defend himself from the insults of his enemies, to restore their dignity to the tribunes who had been expelled from the State, and to free himself and the Roman People from the oppression of a small faction. (tr.)

⁵⁷ For Caesar's repetitive technique see Rambaud, 186-90.

⁵⁸ In sudden regard for protocol he held the session outside the pomerium. Dio, 41.15.2.

⁵⁹ Dio, 41.17.2; Cic. *Att.* 10.4.8. *Sacrilegium* was not a form of *maiestas* in this or any other period with which the present study is concerned. See p. 288.

⁶⁰ The Senate's lukewarm response was influenced by Pompey's threat that

campaign it was expedient for him to simulate humility. The restitution at the end of 49 of persons convicted under Pompey's *ambitus* law was effected *iudicio populi* rather than *suo beneficio*, for the significant reason "ne . . . arrogans in praeripiendo populi beneficio videretur"⁶¹ (3.1.5).

It was time to exploit the wider possibilities of *maiestas populi Romani*. *Ego et populus* could be shelved,⁶² and its place taken by *ego et omnes gentes*. Even before the civil war a start had been made with *voluntas totius Italiae*⁶³ (Rambaud, 278-80), and this concept was to be extended. A significant example is Caesar's viristine grant of citizenship to Cadiz (Dio, 41.24.1; Livy, *Per.* 110). The Gaditani had expelled the Pompeian Gallonius (2.20.2-3), but in so doing they had merely followed the example of other communities, such as Carmona (2.19.4). Yet only Gades was rewarded with citizenship. As there was a *maiestas* treaty with Gades (p. 9), the implication was that special recognition was due to an ally who, by adhering to Caesar, was deemed to have discharged its obligation "*maiestatem populi Romani comiter conservare*".⁶⁴ At Oricum the Greeks, refusing to fight "*contra imperium populi Romani*", spontaneously attempted to admit Caesar into their city (3.11.4).⁶⁵ The Apolloniates refused to take any decision "*contra atque omnis Italia populusque Romanus iudicavisset*"⁶⁶ (3.12.2; cf. *Bell. Alex.* 67.2). This broader *maiestas* concept was linked to Caesar's peace offensive,

those who remained in Rome would be regarded in the same light as those who joined Caesar. *B.C.* 1.33.1-2; cf. Cic. *Marc.* 18; *Att.* 11.6.2, 6. Men were not persuaded of the inevitability of Caesar's victory.

⁶¹ In order not to seem presumptuous in usurping the People's right to confer benefits. (tr.)

⁶² Although not entirely abandoned. See *B.C.* 3.26.1; 3.53.5; 3.91.2; 3.99.3.

⁶³ The will of all Italy. (tr.)

⁶⁴ Cf. Caesar's grant of citizenship to the Transpadane Gauls because he had been their governor. Dio, 41.36.3.

⁶⁵ The prototype for enthusiastic admissions was Auximum, whose decurions could not bring themselves to exclude "*C. Caesarem imperatorem, bene de re publica meritum, tantis rebus gestis*" (Gaius Caesar, the general who deserved well of the State and had wrought such achievements) (1.13.1). As to whether the decurions so expressed themselves, see Rambaud, 192.

which aimed at "quietem Italiae, pacem provinciarum, salutem imperii"⁶⁷ (3.57.4).⁶⁸ Gelzer (213.191), citing Sallust (*Ep. ad Caes.* 1.3.1; 1.8.4.) and Dolabella (*ap. Cic. Fam.* 9.9.3), rightly says that this new concept of the State was generally accepted by Caesarians, but is on less safe ground when he asserts that Caesar's opponents clung to Rome as the focal point of the *res publica*. Caesar's strategy at Dyrrachium was designed "ut auctoritatem qua ille (sc. Pompeius) maxime apud exterarum nationes uti videbatur, minueret"⁶⁹ (3.43.3); and after Caesar's setback there Pompey sent despatches "per omnes provincias civitatesque"⁷⁰ (3.79.4), and did not sail for Italy, because he did not want to give the impression that it was the stake for which he was fighting (Dio, 41.52.2-3). Caesar had no monopoly of *ego et omnes gentes*.

The period from Pharsalus to the Ides of March furnishes evidence on both sides of the line. After the battle Caesar said: "Tantis rebus gestis Gaius Caesar condemnatus essem nisi ab exercitu auxilium petissem" (Suet. *Caes.* 30.4).⁷¹ The combination of the impersonal 'Caesar' of the Commentaries with the personal verb is so strongly suggestive of the royal 'we' that Lämmli (103.65) observes that Caesar's name had become a concept. It may indeed seem that "*tantis rebus gestis Gaius Caesar*" had coalesced in a similar way to the suggested *maiestaspopuliromani* (p. 13). At Alexandria the carrying of the *fascies* before Caesar caused a disturbance, for "in hoc omnis multitudo maiestatem regiam minui praedicebat"⁷² (3.106.4). As the Greek-speaking Alexandrians would not have had an exact Greek equivalent for *maiestas regia* (p. 1), it may be felt

⁶⁶ Contrary to the decision of the Roman People and all Italy. (tr.) The Apolloniates would have recalled the fate of the Massilienses who, invited to follow "the lead of all Italy", had presumed to reply that the *populus Romanus* was divided into two parts, to both of which they were equally indebted for benefits (1.35.1, 3, 5).

⁶⁷ Calm in Italy, peace in the provinces, and security in the empire. (tr.)

⁶⁸ On the "peace offensive" see Gelzer, 212-5, 221, 223 and n.239.

⁶⁹ To reduce the influence that Pompey seemed to enjoy among foreign nations. (tr.)

⁷⁰ Throughout the provinces and states. (tr.)

⁷¹ The passage has been cited before, but bears repeating because of its several implications.

⁷² The populace declared that royal *maiestas* was hereby diminished. (tr.)

that Caesar introduced an un-Hellenistic element in order to imply a link between his *fascēs* and regal *maiestas*. It may also have been intended to emphasize that, unlike the consul Appius Claudius (p. 12), Caesar did not dip his *fascēs* before any *maiestas*. But this impression is weakened by the immediately following statement: "controversias regum ad populum Romanum et ad se, quod esset consul, pertinere existimans"⁷³ (3.107.2; cf. *Bell. Alex.* 68.1).

The continuators do not tend to emphasize Caesarian *maiestas*. *Ego et populus* appears (*Bell. Alex.* 24.2; *Bell. Af.* 54.4; *Bell. Hisp.* 42.3), but in *Bellum Hispaniense* (42.3) the context strongly implies the normal *crimen maiestatis*, based on *maiestas populi Romani*: "Populi Romani magistratibus sacrosanctis manus . . . attulistis."⁷⁴ Two mass trials of Roman citizens for *maiestas* were conducted by Caesar in Africa. At Utica confiscation of property was threatened against "civis . . . Romanos negotiatores et eos qui inter CCC pecunias contulerant Varo et Scipioni",⁷⁵ but the accused secured mitigation to a fine of HS 2,000 (*Bell. Af.* 90). The crime seems to have fallen under the category introduced by the *lex Varia* (p. 59). There is some suggestion here that the crime had been committed against Caesar, for the accused are contrasted with the citizens of Utica, whom Caesar thanked "pro eorum erga se studio" (*Bell. Af.* 90.1). But at Zama confiscation was decreed against those "qui cives Romani contra populum Romanum arma tulerant"⁷⁶ (*Bell. Af.* 97.1; cf. *Dig.* 48.4.1.1). Hirtius⁷⁷ includes three passages in *Bellum Alexandrinum* which seem to be deliberately intended to rebut any suggestion of Caesarian *maiestas*. The expressions "imperii nostri dignitas" (33.4) and "dignitas populi Romani" (36.2)

⁷³ Thinking that the royal disputes concerned the Roman People and himself as consul. (tr.)

⁷⁴ You have laid hands on the inviolable magistrates of the Roman People. (tr.)

⁷⁵ Roman traders and those members of the Three Hundred who had contributed money to Varus and Scipio. (tr.)

⁷⁶ Who, being Roman citizens, had borne arms against the Roman People. (tr.)

⁷⁷ For Hirtius as the probable author of *Bellum Alexandrinum* see Rice Holmes, *Republic* 3.483-4; Gelzer, 231.283, 238.308.

flank the most explicit passage in all the Commentaries: "Domitius . . . (cum) turpe populo Romano et C. Caesari victori sibique infame esse statueret regna sociorum atque amicorum ab externo rege occupari, nuntios confestim ad Pharnacem misit . . . neve occupatione belli civilis populi Romani ius maiestatemque temptaret"⁷⁸ (34.2). Here *ego et populus* is expanded to *ego et populus et ille* by the inclusion of *sibique infame*, and this in a context where *maiestas populi Romani* is expressly mentioned. The subordinate nature of magisterial *maiestas* is similarly acknowledged in *Bellum Africum* (57.3): "Usu venisse hoc civi Romano et ei qui ab populo Romano honores accepisset."⁷⁹ In contrast to Hirtius' suggestive "bene de se et populo Romano meriti" in *Bellum Gallicum* VIII (p. 124), he and the other continuators now base the notion of a deserving ally solely on the criterion *de populo Romano* or *de re publica* (*Bell. Alex.* 66.5; *Bell. Af.* 77.1; *Bell. Hisp.* 3.3).

It can be asserted with some confidence that there was no general recognition of a technical *maiestas* shift to Caesar up to and including the second Spanish campaign, and that until then the technical concept of *maiestas populi Romani* was undisturbed. Whatever degree of effective control Caesar may have exercised, the legal concept of *maiestas populi Romani* endured, which means that the technical orientation of the *maiestas* law would not have been changed. It is not possible to be as confident for the period from Munda to the Ides of March, but it should be pointed out that Caesar's *maiestas* legislation was introduced in 47 or 46 B.C. (pp. 162-64), and there is no reason to believe that he passed another *lex maiestatis* as late as 45 or 44 B.C. It will be suggested (pp. 157-60) that the technical orientation of his *maiestas* legislation was identical with that of his predecessors, in that it continued to be based on *maiestas populi Romani minuta*.

⁷⁸ Domitius, deeming it a disgrace to the Roman People, the victorious Gaius Caesar and himself for allied and friendly kingdoms to be seized by a foreign king, sent envoys to warn Pharnaces not to assail the authority and *maiestas* of the Roman People by resorting to civil war. (tr.)

⁷⁹ This had happened to a Roman citizen and a man who had received his office from the Roman People. (tr.)

For the sake of completeness, however, three of the honours which were showered on Caesar, and which may be regarded as particularly significant for a *maiestas* shift, will be briefly considered. The first is that attested by Dio (42.20.1), namely the appointment of Caesar after Pharsalus as the arbiter of war and peace, without any obligation to consult the People or Senate. There is no clear evidence that Caesar used this power inconsistently with the survival of *maiestas populi Romani*. In the East, after the Alexandrian campaign, Caesar laid down duties for rulers who were "et sibi et populo Romano amicissimi"⁸⁰ (*Bell. Alex.* 65.4), but *ego et populus* did not raise a necessary implication of personal *maiestas*. Caesar's decrees in favour of the Jews were subsequently confirmed and amplified by the Senate.⁸¹ The treaty which Augustus concluded with Mitylene in 25 B.C. furnishes a clue to the form of Caesar's treaties. This renewal of an earlier treaty was probably a *maiestas* treaty, in the form of that with the Aetolians in 189 B.C.⁸² As there were negotiations between Caesar and Mitylene in 48 or 47 B.C., and as a *senatusconsultum* is attested for 45 B.C. (Täubler, 46; Gelzer, 241), it is reasonable to suppose that the treaty of 48 or 47 B.C., as confirmed by the Senate in 45, was the original treaty which, as renewed in 25 B.C., retained the expression *maiestatem populi Romani comiter conservare*.

In view of the close link between the *maiestas* of the Roman People and that of the gods, particularly Jupiter (pp. 6-7), it may be important that in 44 B.C. Δία τε αὐτὸν ἄντικρυς Ἰούλιον προσηγόρευσαν⁸³ (Dio, 44.6.4). A temple was to be dedicated to Caesar and his Clemency, with Antony as the priest ὥσπερ τινὰ Διάλιον.⁸⁴ It is preferable to understand Δία Ἰούλιον as "Jupiter Julius" (Rice Holmes, *Republic* 3.332; Carson, 47), rather than as "Divus Julius" (Taylor, *Politics* 175; Gelzer, 293), particularly in view of ὥσπερ τινὰ Διάλιον, which must mean 'a sort of flamen Dialis' (cf. Cic.

⁸⁰ Loyal friends both to himself and to the Roman People. (tr.)

⁸¹ Josephus, *Ant.* 14.192. Cf. Rice Holmes, *Republic* 3.507-8; Gelzer, 238.309.

⁸² Cf. p. 8. See also Täubler, 64-5, 451, 454, 456; Sherwin-White, *Citizenship* 46, 50-1, 56.1, 159-60.

⁸³ They forthwith named him Jupiter Julius. (tr.)

⁸⁴ A sort of priest of Jupiter. (tr.)

Phil. 2.110). This step, following on the dedication of the temple of Venus Genetrix in 46 B.C.,⁸⁵ the inscription on Caesar's statue that he was ἡμίθεος⁸⁶ in 46 B.C. (Dio, 43.14.6), and the erection of a statue in the temple of Quirinus inscribed θεῷ ἀνίκητῳ⁸⁷ in 45 B.C. (Dio, 43.45.3), may suggest a *maiestas* shift to Caesar in the primary sense of the concept. But there was ample Republican precedent for the acceptance of Caesar as a god by Hellenistic communities,⁸⁸ and even in Rome extravagant honours had been offered to Republican heroes at various times.⁸⁹ Caesar had ἡμίθεος deleted from his statue, and the θεῷ ἀνίκητῳ inscription may have been added after his death (Adcock, *CAH* 9.719-20; Taylor, *Divinity* 65). There was no applause when his statue appeared with that of Victory at his Spanish triumph, and much dissatisfaction at the placing of his statue among those of the kings (Cic. *Att.* 13.44.1; *Deiot.* 33.4). This absence of general recognition should be taken with the fact that many people hoped by voting honours to Caesar to expose him to contempt and ridicule (Dio, 44.7.2-4; cf. 44.3.2-3). Cicero's grim jest may have expressed a widely held view: *Eum* (sc. *Caesarem*) σύνναον *Quirini malo quam Salutis*⁹⁰ (*Att.* 12.45.2).

Premenstein (33-6; cf. Taylor, *Politics* 174) believes that the oath for the protection of Caesar's person in 44 B.C. was sworn by both Senate and People, and marked the establishment of a patron-client relationship, a *Gefolgschaft*, between Caesar and all citizens; ancillary to the oath were the honours voted by the Senate and confirmed by the People, including the title *pater patriae*, the oath by Caesar's *Salus* and *Genius*, and the rights of tribunician inviolability and the *ius auxilii*. The oath to Caesar, having been imposed by *senatusconsultum* and *lex*, was therefore akin to an *Unterthaneneid*. If Premenstein is right there may be good reason to

⁸⁵ Rice Holmes, *Republic* 3.283; Taylor, *Divinity* 63-4; Gelzer, 226.251.

⁸⁶ A demigod. (tr.)

⁸⁷ To the invincible god. (tr.)

⁸⁸ Bailey, 138-9; Taylor, *Divinity* 35-42; Gelzer, 225-6. Adcock (*CAH* 9.722) aptly remarks that the Greek East would have said the same of Pompey if he had won.

⁸⁹ Bailey, 139; Taylor, *Divinity* 41, 50; Carson, 50.

⁹⁰ I would rather have Caesar's temple adjoining that of Quirinus than that of Health. (tr.)

believe in a technical *maiestas* shift to Caesar in 44 B.C., for a *clientela* bound by an *Untertaneneid* would have been the internal equivalent of an external community which contracted to respect Roman *maiestas*.⁹¹ The terms of the oath are given by Appian (*B.C.* 2.20.145). Antony, in the course of the funeral oration, read out τοὺς ὄρκους, ἡ μὲν φυλάξειν Καίσαρα καὶ τὸ Καίσαρος σῶμα παντὶ σθένει πάντας ἢ, εἰ τις ἐπιβουλεύσειεν, ἐξώλεις εἶναι τοὺς οὐκ ἀμύναντας αὐτῷ.⁹² Premierstein would have to show that πάντας means all citizens and not merely senators,⁹³ and that the obligation to swear was imposed by a *lex*. There is some support for this interpretation in Antony's ἡ τε βουλὴ καὶ μετὰ αὐτῆς ὁ δῆμος ἔτι περιόντι ἐψηφίσασθε⁹⁴ (Appian, *B.C.* 2.20.144), and in οἰόμενος τῇ πάντων εὐνοίᾳ φυλάττεσθαι⁹⁵ (Nic. Dam. *Vit. Caes.* 22.80), if Premierstein (34) correctly holds that Nicolaus used εὐνοια as the technical expression for *Gefolgstreue*. But Appian himself (*B.C.* 2.20.145) indicates a limitation on πάντας, for when Antony said that he would not avenge Caesar because senators were in favour of an amnesty, the Senate was disturbed ἐπὶ τῷδε μάλιστα προφανῶς ἐς αὐτὴν εἰρημένῳ.⁹⁶ Suetonius (*Caes.* 84.2) limits the oath to the Senate, while Dio (44.7.4) attests τὸ πρὸς τε τῶν βουλευτῶν καὶ πρὸς τῶν ἱππέων τηρεῖσθαι.⁹⁷ Livy (*Per.* 116) specifies decrees of the Senate as the source of the "plurimi maximique honores".⁹⁸ Nicolaus of Damascus (*Vit. Caes.* 22.80; cf. Dio, 44.7.3-4; Suet. *Caes.* 86) believed that the declaration of sacrosanctity and the title

⁹¹ Cf. Premierstein, 18. It will be suggested (pp. 222-33) that the elements analysed by Premierstein in regard to Caesar are of paramount importance in the case of Augustus.

⁹² The oaths which bound all to guard Caesar and his person with all their strength and which damned those who did not guard him against conspiracies. (tr.)

⁹³ The general view is that only senators had to swear. Rice Holmes, *Republic* 3.332; Gelzer, 292. Taylor (*Politics* 174) accepts a universal oath, but believes that only senators had taken it at the time of Caesar's death.

⁹⁴ The Senate and the People both decreed. (tr.)

⁹⁵ Believing himself protected by the good-will of all. (tr.)

⁹⁶ Because this statement quite clearly referred to the Senate. (tr.)

⁹⁷ Protection by senators and knights. (tr.)

⁹⁸ The many signal honours. (tr.)

pater patriae were intended by Caesar's enemies to put him off his guard. There must have been a strong belief in Caesar's gullibility induced by mental illness, for Antony found it necessary to rebut it (Dio, 44.46.2).⁹⁹

⁹⁹ It is no paradox to say that Caesar's most prominent office, the dictatorship, is not significant for a *maiestas* shift. Despite Mommsen (*Staat* 2.170), it has been shown by Siber (*Verfassung* 210-1) that the mere disregard, in Caesar's case, of the temporal limit on the dictatorship did not take the office out of the category of a Republican magistracy. Therefore in legal theory it was no more than a magistracy, from which it follows that its holder merely had derivative *maiestas*. Despite Dio 43.44.2, it is not likely that Caesar used *imperator* as a *praenomen* (Syme, *Imperator* 176-9; Adcock, *CAH* 9.728), so that it need not be considered as evidence of *maiestas*. The tribunician power had important connotations for *maiestas Augusti* (pp. 213-22), but its grant to Caesar—for which see Hohl (*Caesar, passim*) and Strack (365-9)—does not seem to be significant for a *maiestas* shift.

Cicero on Clemency

In September 46 L. Piso drew the Senate's attention to the case of M. Claudius Marcellus, a prominent Pompeian and an old opponent of Caesar,¹ then living in exile at Mitylene (Cic. *Fam.* 4.7.4). Caesar, although not well disposed towards Marcellus, and knowing that he was irreconcilable, pardoned him in deference to the almost unanimous wish of the Senate (Cic. *Marc.* 1.3; *Fam.* 4.4.3). Cicero, breaking his long silence (*Fam.* 4.4.4), delivered a speech of thanks which, apart from fulsome praise and some modest advice, mentioned a recent conspiracy against Caesar, to which Caesar had referred when pardoning Marcellus, and in regard to which he had said: "Satis diu vel naturae vixi vel gloriae"² (Cic. *Marc.* 8.25). Cicero spoke gravely of Caesar's 'terrible suspicions', which it was the duty of all men to forestall. It was inconceivable that danger threatened from Caesarians, and equally impossible that Pompeians, who owed their lives to Caesar, would plot against him (7.21). But men's minds were so complex that Caesar should be even more suspicious and cautious, for not even a god could save the State if criminal conspiracy were added to natural hazards (7.22-3). Caesar had been lenient, but there were ingrates who remained hostile (10.31). He was enjoined to look to his life and security; since he believed that there was a lurking danger to be guarded against, he was assured of the constant protection of all (10.32).

¹ As consul in 51 Marcellus raised the question of a successor to Caesar, and scourged a citizen of Comum in contempt of the citizenship which Caesar had granted to the city. Rice Holmes, *Republic* 2.242-3, 317-20; cf. Boissier, 269-70.

² I have lived long enough for nature or for glory. (tr.)

Gelzer (261) believes that the conspiracy to which Cicero refers was one which was organized by disgruntled Caesarians, led by Antony. This view is based on Cicero's allegation that an assassin sent by Antony had been caught at Caesar's house, and that Caesar had openly accused Antony in the Senate (Cic. *Phil.* 2.29.74). Gelzer is probably right if it can be shown that the accusation against Antony was made by Caesar during the sitting at which he pardoned Marcellus, but the chronology is against this. The attempted assassination occurred at the very time when Caesar levied execution against Antony for the purchase price of Pompey's assets, and interdicted him from selling the estate of L. Rubrius which he had inherited (Cic. *Phil.* 2.29.73-4). Caesar, after accusing Antony in the Senate, granted him a short extension of time for payment, and left for Spain (Cic. *Phil.* 2.29.74). As Caesar set out for Spain in November 46,³ and as Marcellus was pardoned in September,⁴ the affair of Antony would have been some four months after the case of Marcellus. But even if Caesar was not referring to the attempted assassination at Antony's instance when he addressed the Senate in regard to Marcellus, it is not impossible that the 'terrible suspicions' which he then expressed concerned a conspiracy of Caesarians rather than Pompeians. The relationship between Caesar and Antony is far from clear, but it should be noticed that Cicero attests a long-standing conspiratorial purpose on Antony's part. When Antony was at Narbo to meet Caesar on his return from Spain, he contracted with Trebonius to join a conspiracy against Caesar. Cicero describes this fact as notorious, and says that it was because of Antony's part in the conspiracy that Trebonius detained him outside the Curia on the Ides of March, while Caesar was being murdered.⁵ The levying of execution

³ Julian Calendar. See Rice Holmes, *Republic* 2.541-2; Gelzer, 272.

⁴ Republican Calendar. Cic. *Fam.* 4.4. Cf. Gelzer, 260.

⁵ Cic. *Phil.* 2.14.34; cf. Plut. *Ant.* 11.2, 13.2. Gelzer (278), accepting the evidence against Antony, makes a pronouncement which in fact discounts Caesarian *maiestas*: "Diese Episode . . . zeigt, wie die politisch hervorragenden Helfer . . . in ihm durchaus noch nicht den rechtmässigen Herrscher anerkannten . . . Fehlte so bei den Hauptanhängern jegliches Ehrfurchtsgefühl . . . so fand Caesar erst recht keine Anerkennung bei der früheren Gegenpartei."

against Antony, in or about November 46, was not the beginning, but the culmination of his differences with Caesar. Relations became strained after Caesar's return to Rome in October 47, when Antony was allowed no discount on his purchase of Pompey's assets (Gelzer, 242); it is possible that the violence which had prevailed at Rome during Caesar's absence, and Antony's failure to restrain it (p. 161), had something to do with the coolness which developed at this time. Antony's failure to accompany Caesar to Africa (*Phil.* 2.29.71) was probably due to this estrangement, and thenceforth he cannot be excluded from the reckoning in regard to conspiracies. It should be noticed that Cicero's reference to the possible authors of a conspiracy (*Marc.* 7.21) is couched in the form of a series of questions which raise, only to reject, the possibilities that the plotters were Caesarians or Pompeians. It is clear that Caesar had not been specific in his allegations, for otherwise Cicero would not have speculated on the identity of the authors. Vagueness on Caesar's part suggests reluctance to name his own supporters, for to have disclosed Pompeian names would not have been embarrassing. And Caesar's expression of utter weariness would surely have been prompted by the shock of finding hostility in his own camp, rather than by a not unexpected Pompeian plot.

The case of Marcellus was in no sense a criminal trial. There was neither a charge nor an accuser, and Caesar did not sit as a judge, but simply exercised his prerogative of mercy. The case of Q. Ligarius, which came before Caesar in October, 46 B.C., is more significant. Ligarius was a legate of Considius Longus, the governor of Africa, in 51 and 50 B.C., and was left in command in the latter year when Considius went to Rome to stand for the consulship.⁶ Ligarius' legation under Considius immediately gives him a similar political orientation to that of his superior, for although legates were appointed by the Senate, it was customary in the late Republic to confine the choice to names submitted by the governor;^{6a} and Considius was a resolute Pompeian, who held Hadrumetum and Thysdra for the Republicans in 49 and 46 B.C. respectively, and would not even

⁶ Cic. *Lig.* 2, 4, 30, 34; *Schol. Gron.* (Teubner ed. of *Pro Ligario*, p. 83).

^{6a}Mommsen, *Staat* 2.1.677ff.; Greenidge, *Public Life* 324.

read a letter by which Caesar's legate, L. Plancus, tried to win him over.⁷

The Senate allotted Africa to L. Aelius Tubero for 49 B.C., but whether as governor⁸ or merely as a commissioner for the purchase of grain⁹ is not clear, although a governorship seems to be better attested. Tubero was in no hurry to take up his office (Cic. *Lig.* 7.21). When P. Attius Varus was driven out of Auximum by Caesar in February 49 he went to Africa and took over the command, apparently with the approval of the inhabitants, who remembered him as a *propraetor* (Caes. *B.C.* 1.12.3, 13, 31.2; *Schol. Gron.* p. 83). When Tubero arrived off Utica, Varus, alleging that he held Africa for the Pompeians, would not allow him to land, nor to put off his son Q. Tubero, who was ill, nor to take in water.¹⁰ A variant tradition attributes the refusal of landing rights directly to Ligarius (*Dig.* 1.2.2.46; cf. Cic. *Lig.* 3.9). L. and Q. Tubero went off to join Pompey in Greece, fought at Pharsalus, and were pardoned by Caesar.¹¹

Ligarius probably fought with Varus against Curio in 49 B.C.¹² After Thapsus Ligarius was captured at Hadrumetum. Caesar spared his life, but obliged him to go into exile (*Bell. Af.* 89.2; Cic. *Lig.* 4.11; 5.13). In the summer of 46 B.C. Cicero sought a pardon for Ligarius and found the prospects very favourable. But when Caesar was on the point of granting a pardon Q. Tubero, the son of L. Tubero, brought a prosecution against Ligarius.¹³ The case was heard by Caesar in the Forum. Q. Tubero was the accuser, and C. Vibius Pansa and Cicero appeared for Ligarius. The outcome was a pardon for Ligarius.¹⁴

⁷ Caes. *B.C.* 2.23.4; *Bell. Af.* 3.1, 4; 33.3; 76.1; 86.3. Cf. Rice Holmes, *Republic* 3.239, 273.

⁸ Caes. *B.C.* 1.30.2; Cic. *Lig.* 7.21; 9.27; *Schol. Gron.* (Teubner ed. p. 83).

⁹ Quint. *Inst. Orat.* 11.1.80. Walser (90) assumes a governorship for Tubero.

¹⁰ Caes. *B.C.* 1.31.3; Cic. *Lig.* 7.22; 8.24; 8.25; 9.27; Oros. 6.15.7; *Schol. Gron.* p. 83.

¹¹ Cic. *Lig.* 3.9; 4.10; 9.27; *Schol. Gron.* p. 84. Cf. Long, 398; Walser, 91.

¹² So Walser, 91. The sources do not name Ligarius—Caes. *B.C.* 2.23-44; Appian, *B.C.* 2.175-90; Dio, 41.41-2; Livy, *Per.* 110; Lucan, *Phars.* 4.581-824—although his participation is likely enough. But Rice Holmes (*Republic* 3.289 and n.8) wrongly cites *Digest* 1.2.2.46 as evidence that Ligarius served under Varus at Utica.

13 and 14 See p. 144

The charge against Ligarius was "quod in Africa fuerit"¹⁵ (Cic. *Lig.* 1.1; 3.9; *Schol. Gron.* p. 84). Further particulars are supplied by Quintilian (*Inst. Orat.* 11.1.80): "(Tiberones) ut primum licuerit a partibus recessisse, Ligarium et perseverasse et non pro Cn. Pompeio . . . sed pro Iuba atque Afris inimicissimis populo Romano stetisse"¹⁶ (cf. Cic. *Lig.* 8.24). But Pomponius (*Dig.* 1.2.2.46) gives a different version: "Is est Quintus Ligarius, qui cum Africae oram teneret, infirmum Tiberonem applicare non permisit nec aquam haurire, quo nomine eum accusavit (sc. Tiberio) et Cicero defendit."¹⁷ The charge has been variously described as *perduellio* arising out of Ligarius' association with Juba; as an (unspecified) "Capitalprozess"; and as no charge at all.^{17a}

The first problem is whether Tiberio relied on Ligarius' hostility to Caesar (or the Roman People), or on the personal *iniuria* suffered by the Tiberones. Cicero (*Lig.* 10.29) puts this question squarely, arguing that Q. Tiberio's continued adherence to Pompey after the rebuff in Africa is inconsistent with his present concern with an injury to the *res publica*; and, if he relies on personal injury, there is no reason to believe that Caesar will punish Tiberio's opponents when he has forgiven his own. This passage suggests that Tiberio framed the charge in language which admitted of two constructions, which would not have been the case if the indictment had given the degree of particularity suggested by Quintilian or Pomponius. It therefore seems that the only allegation of fact was the bald "quod in Africa fuerit".¹⁸ Cicero did not elaborate on the indictment, and understandably so. An outright *quod arma contra populum Romanum tulisset*¹⁹ would have been

¹⁵ Cic. *Fam.* 6.13, 14; *Schol. Gron.* pp. 83-4. Cf. Walser, 92; Gelzer, 271.

¹⁶ Cic. *Lig. passim*; Quint. *Inst. Orat.* 11.1.80; Plut. *Cic.* 39.7; Plut. *Brut.* 11.1.

¹⁷ That he had been in Africa. (tr.)

¹⁸ The Tiberones left their party as soon as they could, but Ligarius persisted and supported not Pompey but Juba and his Africans, the bitter enemy of the Roman People. (tr.)

¹⁷ He is Quintus Ligarius who, when in command in Africa, did not allow the ailing Tiberio to land or take on water. He was accused under this heading by Tiberio and defended by Cicero. (tr.)

^{17a} Walser, 92; Münzer, *RE* 13.1.521. Mommsen, *Staat* 2.1.735. Long, 4.400f.

¹⁸ Plutarch's "That he had been one of Caesar's enemies" (*Cic.* 39) is, in the light of the Latin texts, unacceptable.

embarrassingly specific, and would certainly have precluded Cicero from deciding (as he did—*Lig.* 1.1; 10.30) to admit the facts, and not even to seek to give them an innocent interpretation.

But even the bald “quod in Africa fuerit” must have been coupled with a conclusion of law in the indictment. Mere presence in Africa, unlike the mere bearing of arms against the Roman People, could not constitute an offence, for it is not possible to assume a rule: *hac lege tenetur qui in Africa fuit fueritve*.²⁰ The charge must have run: (*aliquid fecit*) *quod in Africa fuerit*;²¹ the obvious complement is *maiestatem populi Romani minuit quod* . . .²² This, like the charge against Norbanus (pp. 51-52), would have disclosed an indictable offence, while not excluding a degree of uncertainty which Cicero was able to turn to his advantage. Cicero toyed with the idea of submitting the legal defence of *maiestatem auxi*: “Taceo, ne haec quidem conligo, quae fortasse valerent etiam apud iudicem: ‘Legatus ante bellum profectus, relictus in pace, bello oppressus, in eo ipso non acerbis, totus animo et studio tuus’ ”²³ (10.30); but realizing that the facts were against him, he wisely abandoned this defence in favour of a straightforward plea *ad misericordiam* (10.30).

It is not impossible that the ambiguity in the charge was deliberate on Tubero's part. As a recognized jurist (*Dig.* 1.2.2.46) he may well have come to the conclusion that Ligarius' conduct was *maiestas*, regarded from both the ‘public’ and the ‘private’ points of view. Ligarius' connection with Juba was clearly *maiestas*,²⁴ and a case could also have been based on the wrongs done to the Tuberones. There had been a wrongful act against L. Tubero in his capacity as a magistrate, and it

¹⁹ That he had borne arms against the Roman People. (tr.)

²⁰ Whoever has been or shall be in Africa is liable under this law. (tr.)

²¹ (He was guilty of something) in that he was in Africa. (tr.)

²² He diminished the *maiestas* of the Roman People, in that . . . (tr.)

²³ I refrain from pleading circumstances that might weigh even with a jury: he took up his legateship before the war, he was left behind in peacetime, he was caught up in the war but showed no bitterness, and is now your devoted supporter. (tr.)

²⁴ Cf. *Dig.* 48.4.4pr: “cuiusve opera dolo malo hostes populi Romani com-
meatu armis telis equis pecunia aliave qua re adiuti erunt” (Whoever,

could also have been urged that Ligarius, in his quasi-magisterial capacity as a legate, had not lived up to the moral standard required of him when he refused aid to a Roman citizen in distress. Some such reasoning must underlie Pomponius' version of the charge (*Dig.* 1.2.2.46). It may therefore be supposed that Tubero enlarged on both the 'public' and the 'private' grounds in his address to Caesar (although not in the indictment), inviting the acceptance of either or both. One alternative was transmitted by Quintilian's source, and the other by that of Pomponius. It is just possible, having regard to the very corrupt form in which excerpts from Pomponius' *Enchiridion* found their way into *Digest* 1.2 (Schulz, *Legal Science* 168), that something has been lost between "aquam haurire" and "quo nomine" in *Digest* 1.2.2.46. Pomponius may have said that Ligarius failed to leave the province on the arrival of a successor to his principal (Considius), and that it was for this that he was prosecuted; it would have been a simple extension of the *lex Cornelia maiestatis* to apply to a legate the rule requiring a retiring governor to leave promptly (cf. p. 79). This view receives some support from Cicero's admission that, while there was nothing criminal in Ligarius' assumption of his legation, or in his acceptance of a mandate when Considius left (*Lig.* 1.2-2.4), it was a "necessitatis crimen" to remain after the arrival of Varus.

Long (400-1) argues that the proceedings against Ligarius did not amount to a trial at all, for four reasons: there was no charge; the case was heard by Caesar, and not by a *quaestio*; Ligarius was not present; and Cicero's speech falls under the category of *deprecatio*, which had no place in regular criminal trials. Three of these points are easily answered: the charge has been sufficiently analysed above; Caesar's exercise of jurisdiction under his extraordinary dictatorial authority did

with wrongful intent, assists the enemies of the Roman People with supplies, arms, weapons, horses, money or anything else); and *Dig.* 48.4.10: "cuius ope consilio dolo malo provincia vel civitas hostibus prodita est" (Whoever, with wrongful intent, aids or counsels the surrender of a province or territory to the enemy). This should be read with the fact that Juba had been declared a *hostis* by the lawful organs in Rome, although the Pompeians had made him an ally. Dio, 41.42.7; cf. Cic. *Lig.* 8.24. See also Walser, 91.

not take the case out of the category of a criminal trial;^{24a} and there was no general rule against trying an accused *in absentia*, although it was frowned upon.^{24b} As to *deprecatio*, it is defined as follows: "Deprecatio est cum et peccasse se et consulto fecisse reus confitetur, et tamen postulet ut sui misereantur"²⁵ (Auct. *Herenn.* 1.14.24; cf. 2.17.25; Cic. *Invent.* 2.11.15). Quintilian says that there is room for *deprecatio* "in senatu et apud populum et apud principem et ubicumque iuris clementia est"²⁶ (*Inst. Orat.* 7.4.18), including trials "apud C. Caesarem et triumviros"²⁷ (*Inst. Orat.* 5.13.5); he cites the general opinion "quod genus causae (sc. deprecationem) plerique negarunt in iudicium umquam venire",²⁸ and says that this is corroborated by Cicero's assertion (*Lig.* 10.30) that he has never before urged, as he now does, "ignoscite iudices, erravit, lapsus est, non putavit; si umquam posthac."²⁹ It will be noticed that *deprecatio* required the admission not only *peccasse se*, but also *consulto fecisse*, in which regard Quintilian seems to have overlooked Cicero's express denial that his client acted with intent: "Quod post adventum Vari in Africa restitit, si est crimosum, necessitatis crimen est, non voluntatis"³⁰ (*Lig.* 2.5). Furthermore, the rule (*nunquam*) *in iudicium venire* could apply only to proceedings before a *quaestio*, for Quintilian allows *deprecatio* in all other criminal courts. It is clear that *deprecatio* was not possible before a *quaestio*, for there the only competent verdicts were *fecisse videtur* and *fecisse non videtur*

^{24a} Mommsen (*Staat* 2.1.735; *Straf* 144), although elsewhere (*Straf* 435.1) he asserts that *deprecatio* had no place in regular criminal trials.

^{24b} Mommsen, *Straf* 333ff. Indeed a general right to prosecute *in absentia* seems to be implied by the existence of special rules forbidding it in particular cases. Thus *Dig.* 3.3.54pr; 48.2.12pr; 48.5.16.1.

²⁵ In a plea of deprecation the accused admits his guilt and wrongful intent, but asks for mercy. (tr.)

²⁶ In the Senate, before the People or the emperor, or wherever else clemency is possible. (tr.)

²⁷ Before Caesar or the triumvirs. (tr.)

²⁸ It is generally held that *deprecatio* is not available in a public court. (tr.) *Inst. Orat.* 7.4.17; cf. 5.4.5; cf. Auct. *Herenn.* 1.14.24; 2.17.25; Cic. *Invent.* 2.11.15.

²⁹ Forgive him, gentlemen. He erred, he slipped, he did not think. If he ever does it again . . . (tr.)

³⁰ As to his remaining in Africa after Varus' arrival, if this is culpable you must charge his necessity, not his intent. (tr.)

(p. 67 n.18). In all other courts *deprecatio* was possible, but this in no way meant that the court ceased to be a criminal tribunal.

Walser (94-5) believes that the trial of Ligarius was engineered, in that Caesar knew and approved the charge and the defence in advance, and had decided beforehand to pardon Ligarius, knowing that his part in the bargain with Juba had been negligible; the purpose of the trial was to show that any man could hope for forgiveness, and so to persuade Varus and Labienus to compromise, rather than to continue the fight in Spain. Even if this is so, it is significant that Caesar elected to pardon Ligarius after a public trial, rather than by an act of clemency in the Senate, as in the case of Marcellus (cf. Cic. *Lig.* 12.37). It was necessary to press home the lesson that people like Varus and Labienus were guilty of *maiestas*; to this end an indictment was raised against Ligarius, and prosecuting and defence counsel were encouraged to canvass the issues fully. The more clearly the guilt of Ligarius was established, the more dramatic would be the impact of the pardon which Caesar granted. In order to heighten the effect, Tubero was allowed to demand an actual death sentence, and not the mere continuation of the exile which had already been imposed on Ligarius (*Lig.* 4.11; 5.13). Cicero (*Lig.* 4.11) is probably right to describe this demand as unprecedented (cf. pp. 65-7), but the fact that Caesar entertained the demand makes the whole case curiously reminiscent of the similar tactics which he had adopted against Rabirius (pp. 32-3). In both cases a minor political figure was involved in a *cause célèbre*, with a threat of execution looming large, and in both cases the purpose was not so much to secure a conviction as to propagate a message; in the case of Rabirius, that Roman citizens could not be executed without trial (Brecht, *Perduellio* 176-80); and in the case of Ligarius, that the remnants of the Pompeian forces could no longer claim to represent the *res publica*.

In November 45 B.C. the Galatian tetrarch Deiotarus was accused by his grandson Castor, and his slave Phidippus, of having attempted to murder Caesar when the latter was his guest after Zela. Deiotarus was represented by legates at the trial, and Cicero appeared in his defence. The case was

tried by Caesar at his house, apparently sitting with a *consilium* (Cic. *Deiot.* 2.5-7; 11.32). Caesar seems to have reserved judgment,³¹ and had not given his verdict at the time of his death; but subsequently Antony posted a decree in favour of Deiotarus, which allegedly came from Caesar's documents (Cic. *Phil.* 2.93-5).

The principal charge against Deiotarius was "domi te suae interficere voluisse"³² (*Deiot.* 5.15), which was *maiestas* under the rule stated in *Digest* 48.4.1.1: "cuiusve opera consilio malo consilium initum erit, quo quis magistratus populi Romani quive imperium potestatem habet occidatur".³³ Indeed Cicero uses similar language: "Contra cuius vitam consilium facinoris inisse arguare"³⁴ (*Deiot.* 2.4). There was also a twofold supplementary charge: "Una regem in speculis semper fuisse, cum a te animo esset alieno, altera exercitum eum contra te magnum comparasse"³⁵ (*Deiot.* 8.22). Deiotarus' hostile attitude to Caesar had allegedly been manifested in various ways (8.24, 25, 26; 12.33), the most significant being the allegation that Deiotarus had received letters from his legate Blesamius, "te in invidia esse, tyrannum existimari, statua inter reges posita animos hominum vehementer offensos, plaudī tibi non solere".³⁶ The *exercitum magnum* which Deiotarus was alleged to have raised against Caesar (8.22) was apparently a force which Deiotarus had attempted to send to Caecilius Bassus (8.23).

In striking contrast to the abject tone of the speeches

³¹ There may, however, have been several hearings on various charges. Cf. Cicero, *Phil.* 2.37.95: "Semper enim absenti adfui Deiotaro" (I often appeared for Deiotarus in his absence).

³² He tried to kill you at his house. (tr.)

³³ By whose instrumentality and wrongful intent a conspiracy is formed to kill a magistrate of the Roman People or a holder of *imperium* or *potestas*. (tr.) See, however, p. 282.

³⁴ Deiotarus is charged with conspiring against Caesar's life. (tr.)

³⁵ Firstly, that the king was always looking for an opportunity, since he was hostile to you. Secondly, that he raised a large army against you. (tr.)

³⁶ To the effect that you were disliked, that you were regarded as a tyrant, that the placing of your statue among those of the kings had offended public opinion, that you did not receive applause. (tr.). *Deiot.* 12.33. If Cicero's fatuous answer to these allegations (12.33-4) was acceptable to Caesar, a serious doubt arises as to the latter's mental state at the time.

for Marcellus and Ligarius, the charges are demolished in a manner strongly reminiscent of the old tearaway Cicero of the Republican courts (5.15-12.33). There is also a critical note which is absent from the other two speeches. Cicero suggests that it is wrong for Caesar to be the judge in his own cause (2.4), and that his house was chosen as the venue in order to cut off the rhetorical flourishes which would have swayed a public audience (2.5-7). This seems to suggest that Caesar deliberately frustrated a plea of *maiestatem auxi*, for it was precisely by means of rhetoric that M. Antonius pressed home that plea at the trial of Norbanus (p. 52). Most pertinently of all, Cicero launches a veiled attack on Caesar's clemency. Caesar, having already written a letter of encouragement to Deiotarus, has committed himself to clemency, and it is not his practice to go back on his word (14.38). This leads to the general admonition that no one whom Caesar has pardoned should have any reason to fear a revocation of the pardon (14.39). It seems that revocation must have been an issue at the time. Perhaps the substantial assets of the pardoned and the needs of the proposed Parthian campaign had dictated a revision of the policy of clemency.

The real significance of Deiotarus' trial, however, lies elsewhere. Heitland (3.361) comes close to the truth when he says: "The whole trial was a striking assertion of arbitrary power, for the Senate do not seem to have had any voice in the matter at any stage, though it was so closely connected with external policy." It is suggested that the key is the existence of a *maiestas* treaty between Rome and Deiotarus, and that his trial was the first example of the use of the domestic Roman Criminal Law to coerce an ally who had failed to uphold Roman *maiestas*. Deiotarus' *maiestas* relationship with Rome probably went back to Pompey's command in the East. The *acta* of Pompey whose ratification Caesar procured in 59 B.C. included the creation of twelve Galatian tetrarchs under the suzerainty of Deiotarus; there was probably a general enabling law under which the ratification of individual treaties was dealt with by Vatinius, to the exclusion of the Senate.^{36a} This explains why it was that

^{36a}Pocock, 170; Gelzer, 68 and n.32.

Deiotarus owed his position initially to Pompey (Cic. *Phil.* 11.13.34), but for its legal validity he was indebted to Caesar (*Bell. Alex.* 68.1). Gelzer (241.319) infers a *maiestas* treaty with Deiotarus from *Bellum Alexandrinum* (68.1; see below). There is perhaps a better piece of evidence. Domitius Calvinus, approached by Deiotarus for aid against Pharnaces, realized that for *regna sociorum atque amicorum* (i.e. *maiestas* allies) to be seized by a foreign king would be disgraceful; he warned Pharnaces to leave Armenia and Cappadocia, and not to use civil war as a means of attacking Roman *maiestas* (*Bell. Alex.* 34.2). In other words, an attack on Armenia would be an assault on Roman *maiestas*. But as Deiotarus held Armenia Minor (*Bell. Alex.* 34.1), it can be argued that Roman *maiestas* was involved only if there was a *maiestas* treaty with him.

Deiotarus supported Pompey in the civil war, and accompanied him on his flight after Pharsalus. In 47 B.C. the other Galatian tetrarchs complained to Caesar that Deiotarus had appropriated territory unlawfully; Deiotarus sought Caesar's pardon on the ground that it had not been for him to judge the disputes of the Roman People, but to obey the power on the spot (*Bell. Alex.* 67). Caesar, saying that Deiotarus ought to have known "quis urbem Italiamque teneret, ubi res publica esset, quis denique . . . consul esset"³⁷ (*Bell. Alex.* 68.1), restored Deiotarus' royal titles, but ordered him to furnish a legion against Pharnaces, and postponed his decision on the tetrarchs' complaint (*Bell. Alex.* 68.1, 2). As Caesar had pointed out, the issue was whether Deiotarus had discharged his *maiestas* obligation to Rome by lending support to Pompey. Cicero canvassed this issue at the trial, arguing that Caesar had never accused Deiotarus "ut hostem, sed ut amicum officio parum functum"³⁸ (*Deiot.* 3.9). When the Senate had passed the ultimate decree against Caesar, and the consuls and Senate had left Italy, Deiotarus had not unreasonably assumed that the security of the Roman People, on which his own safety depended, was in jeopardy (4.11). He had joined Pompey "vel rogatus ut amicus, vel arcessitus ut socius, vel evocatus ut

³⁷ Who controlled Rome and Italy, where the State was located, and who was consul. (tr.)

³⁸ As an enemy, but as a friend who had not done his duty. (tr.)

is qui senatui parere didicisset''³⁹ (5.13)—that is, in discharge, as he saw it, of his *maiestas* obligation. It may seem that, in trying Deiotarus, Caesar came very close to an outright assertion of personal *maiestas*, but in the final analysis there was still a saving clause in the suggestion put forward in *Bellum Alexandrinum* 68.1: Deiotarus had misconceived the whereabouts of the Roman State, and had therefore not in fact honoured the *maiestas* treaty; and he had also forgotten that Caesar, *as consul*, was the proper representative of the State.

In January 44 B.C. Caesar's statue on the *rostra* was found crowned with a diadem. The tribunes Epidius Marullus and Caesetius Flavus ordered it to be removed.⁴⁰ This was all that happened, according to Dio (44.9.2-3); Caesar, although annoyed, held his peace. Suetonius (*Caes.* 79.1-2) adds that the tribunes imprisoned the men responsible, whereupon Caesar reprimanded and summarily degraded them. Closely connected⁴¹ with this incident is that which occurred when Caesar was returning after celebrating the Latin Festival on the Alban Mount. Some of the spectators lining the route hailed him as king, to which Caesar replied: "Caesarem se non regem esse".⁴² Suetonius says nothing more about the incident, but Dio reports (44.10.1-3) that the tribunes Marullus and Flavus attempted to prosecute the first man who had hailed Caesar as king, whereupon Caesar became very angry, although he took no action for the moment. But when the tribunes issued an edict, declaring that their freedom of speech was being inhibited, Caesar acted. According to Dio (44.10.2-3) Caesar accused the tribunes in the Senate; rejecting the proposed death sentence, he accepted a decree removing them from the tribunate, and then struck their names from the Senate list. Dio, no doubt influenced by the practice of a later period, is

³⁹ Because he had been requested as a friend, or summoned as an ally, or called up as one who had learnt to obey the Senate. (tr.)

⁴⁰ Suet. *Caes.* 79.1-2; Dio, 44.9.2-3; Appian, *B.C.* 2.108.449; Plut. *Caes.* 61.3.

⁴¹ Later on the same day, according to Rice Holmes, *Republic* 3.334.

⁴² He was Caesar, not a king. (tr.). Suet. *Caes.* 79.2; cf. Dio, 44.10.1; Appian, *B.C.* 2.108.450-3. Gelzer's explanation (296) that "Rex" was a "Beiname eines Zweigs der Marcii"—namely the Rex Marcius who flourished *circa* 54 B.C. (Syme, *Imperator* 174)—is strained.

wrong to speak of a trial in the Senate, for the criminal jurisdiction of the Senate was still in the future (cf. p. 176). Velleius (2.68.4) says, perhaps correctly, that Caesar refrained from exercising his criminal jurisdiction as dictator, and confined himself to a censorial notation (cf. Livy, *Per.* 116).

From a legal point of view Caesar had no case against the tribunes. Whether they took criminal proceedings against the man who crowned Caesar's statue, or the spectator who first hailed him as king, it is clear that the tribunes were well within their rights. Both acts fell squarely under *affectatio regni* and as such were a form of *perduellio* in one of its oldest connotations, the proper prosecution of which was in the *comitia centuriata* at the instance of the tribunes.⁴³ There is no reason to believe that *affectatio regni* was ever included in a *lex maiestatis*. Indeed it is unlikely that it could have been prosecuted as *maiestas* at all, even on a *multae inrogatio* in the *comitia tributa*, for, although a form of *perduellio*, it had no connection with the *Rechenschaftsprozess* in respect of *Amtsverbrechen* (cf. Brecht, *Maiestas* 358.10). It was because the tribunes had the law on their side that Caesar was unable to make use of his dictatorial criminal jurisdiction, but he nevertheless reacted with the sensitivity which he habitually showed to any attempt to attack him by means of a political prosecution.⁴⁴ Not content with the political ruin of the tribunes, Caesar tried, although without success, to persuade Caesetius' father to disown his son (Val. Max. 5.7.2).

The *crimen maiestatis* was the subject of Caesar's literary activity during his dictatorship, as it had been in Gaul. Taylor (*Politics* 170-1) makes the interesting suggestion that Caesar's *Anticato*, which was published in 45 B.C. in rebuttal of Cicero's

Mommsen, *Staat* 2.318.2; *Straf* 551.4; Brecht, *Perduellio* 191, 196.2; *Maiestas* 355.1, 357; Pollack, 179 note.

⁴⁴ Caesar was never allowed to forget the *maiestas* prosecution which his opponents had long sought to bring. At his triumph in 46 B.C. his soldiers shouted: ἂν μὲν καλῶς ποιήσης, κολασθήσῃ, ἂν δὲ κακῶς, βασιλεύσεις (If you do the right thing you will be punished; but if you break the law you will be king) (Dio, 43.20.3). Dio, 43.20.3-4 understood this to mean that if Caesar took the just course of restoring the government to the People he would have to stand trial for what he had done contrary to law. But if he took the unjust course of retaining his power he would be king.

Cato, was presented as a speech for the prosecution, charging the dead *Cato* with *maiestas*. The testimonia and fragments⁴⁵ seem to support this hypothesis. Cremutius Cordus, charged with *maiestas* in A.D. 25 for having praised Brutus and Cassius in his history, said in the course of his discourse on freedom of speech: "Marci Ciceronis libro, quo Catonem caelo aequavit, quid aliud dictator Caesar quam rescripta oratione velut apud iudices respondit?"⁴⁶ (Tac. *Ann.* 4.34.7). Cicero is to a similar effect: "Nam aut negari potest id factum esse quod laudetur, aut non eo nomine adficiendum quo laudator adfecerit, aut omnino non esse laudabile, quod non recte non iure factum sit. quibus omnibus generibus usus est nimis impudenter Caesar contra meum Catonem."⁴⁷ One of Caesar's accusations was that, as praetor, *Cato* had often been improperly dressed when presiding in court (cf. p. 82). Plutarch (*Cat. Min.* 44.1) reports this allegation in language which, for a Greek author, gives an uncharacteristically clear indication that the *crimen maiestatis* is meant: εἰς δὲ τὸ ἐξῆς ἔτος αἰρεθεὶς ὁ Κάτων στρατηγὸς οὐδὲν ἔδοξε προστιθέναι τῇ ἀρχῇ τοσοῦτον εἰς σεμνότητα καὶ μέγεθος ἄρχων καλῶς, ὅσον ἀφαιρεῖν καὶ καταισχύνειν ἀνυπόδητος καὶ ἀχίτων πολλάκις ἐπὶ τὸ βῆμα προερχόμενος καὶ θανατικὰς δίκας ἐπιφανῶν ἀνδρῶν οὕτω βραβεύων.⁴⁸

Another charge was that *Cato* had transacted public business while drunk (Plut. loc. cit.). It was also alleged (Plut. *Cat. Min.* 44.7) that *Cato*, when attempting to curb bribery, had usurped the functions of the Senate, the Courts, and the magistrates—a form of *maiestas* analogous to "quive privatus pro potestate magistrature quid sciens dolo malo gesserit"⁴⁹ (*Dig.* 48.4.3).

⁴⁵ For which see Oberlinus, 792-3; Klotz, *C. Iuli Caesaris Commentarii* (Teubner, 1927) 3. 185-90.

⁴⁶ When Cicero produced a book extolling *Cato*, Caesar replied with the sort of written speech that one would deliver before a jury. (tr.)

⁴⁷ One may deny the commission of the praiseworthy act, or criticize the light in which the laudator has presented it, or allege that it was improper or unlawful, and therefore not at all laudable. Caesar shamelessly used all these techniques against my *Cato*. (tr.)

⁴⁸ *Cato* was elected praetor for the next year, but was reputed to have added less to the *maiestas* of his office by wise administration than he had disgracefully diminished it by holding court without shoes or tunic, even when presiding over the capital trials of prominent men. (tr.)

⁴⁹ Any private citizen who knowingly and with wrongful intent exercises the function of a magistrate. (tr.)

Caesar's Maiestas Legislation

It has been said¹ that the evidence for Caesar's *maiestas* law is Cicero (*Phil.* 1.9.23): "Quid, quod obrogatur legibus Caesaris, quae iubent ei qui de vi, itemque ei qui maiestatis damnatus sit, aqua et igni interdici? quibus cum provocatio datur, nonne acta Caesaris rescinduntur?"² This evidence has been diversely interpreted. Mommsen³ summarily dismisses Caesar's *maiestas* law as a mere penal section in his judiciary laws.⁴ The argument is, presumably, that if Cicero here purports to give the full content of Caesar's law he cannot be referring to a substantive *lex maiestatis*, for a law consisting only of a sanction is not conceivable;⁵ it would follow that, as a mere penal amendment, the provision attested by Cicero would properly have been included in a general judiciary law. Other authorities⁶ are inclined to take this evidence as proof of

¹ Rein, 515; Mommsen, *Straf* 541 and n.2; Greenidge, *Procedure* 427; Girard, *Leges* 303; Rotondi, 422; Rice Holmes, *Republic* 3. 284-5; Ciaceri, 251.1; Kübler, 548; Schisas, 132; Arangio-Ruiz, 137; Chilton, 75; Rogers, *Treason* 91.

² What about the tacit repeal of Caesar's laws which prescribe exile for those convicted *de vi*, and also those convicted of *maiestas*? Does not the grant to them of *provocatio* rescind Caesar's acts? (tr.)

³ *Straf* 541.2; cf. Zumpt, 2.2.476-7; Botsford, 455 and n.7; Ciaceri, 251.1; Lenglé, *Straf* 47; Brecht, *Maiestas* 357.

⁴ An argument which depends, before anything else, on the validity of the assumption that the known *leges Iuliae iudiciorum publicorum et privatorum* were introduced by Caesar, and not by Augustus. On this question see pp. 284-6.

⁵ But see Cicero, *Rep.* 2.31.54; "Neque vero leges Porciae . . . quicquam praeter sanctionem attulerunt novi" (Indeed the Porcian laws contained no innovation except the sanction).

⁶ Rein, 515-6; Greenidge, *Treason* 234-5; *Procedure* 427; Pollack, 199.3;

a substantive law. Although the point does not seem to have been debated by the authorities consulted, the reasoning would probably be that Cicero's language should be given a wider import. He says (*Phil.* 1.9.21) that Antony has introduced a law granting *provocatio ad populum* to those convicted of *vis* and *maiestas*: "Altera promulgata lex est, ut de vi et maiestatis damnati ad populum provocent, si velint." He then contends (*Phil.* 1.9.23) that the law promulgated by Antony obrogates Caesar's laws which prescribed interdiction from water and fire as the penalty for those crimes, and that therefore Caesar's *acta* are, in effect, annulled. *Obrogatio* was the tacit repeal of an earlier law by the passing of a later one which was inconsistent with it, and which was therefore deemed to repeal it (Krüger, 22), and Cicero's point is that the grant of *provocatio* is such a tacit repeal. It does not matter, as far as the present problem is concerned, whether *provocatio ad populum* meant the exercise of jurisdiction by the *comitia* as a court of first instance, or as a court of cassation which heard an appeal against a tribune's judgment (pp. 18-19), for in either case the final decision rested with the *comitia*.⁷ It would therefore be argued that Antony's introduction of *provocatio* must have related to trials conducted in the *quaestio maiestatis* or the *quaestio de vi*, for it would not have been an innovation if it had merely dealt with the long-standing right of *provocatio* in the *anquisitio-comitia* procedure. The further argument would be that, according to Cicero, Caesar's laws were obrogated because the final decision would no longer rest with the *quaestio*, but with the *comitia*. It would follow that Caesar's laws had not only laid down a penalty, but had also prescribed

Girard, *Leges*, 321.1; Schisas, 132; Kübler, 548; Arangio-Ruiz, 137; Siber, *Analogie* 22, 66; *Verfassung* 290; Chilton, 75. See also p. 162 n.21.

⁷ Antony's introduction of *provocatio* in respect of matters which fell under a permanent *quaestio* (*de vi* or *maiestatis*) does, however, tell against Brecht's view (p. 18) that the *comitia* formed the court of first instance. On Brecht's theory the *anquisitio* conducted by a tribune was a preliminary procedure designed to ascertain a proposal on the question of sentence, which the tribune would then press before the *comitia*. But it would not have been within the competence of a *quaestio* to return a verdict which amounted merely to a proposed sentence, for it was inherent in the constitution of a *quaestio* that the presiding praetor could pronounce only *fecisse videtur* or *fecisse non videtur* (p. 67 n.18).

a substantive category of *vis* and a substantive category of *maiestas* over which the respective *quaestiones* were to have jurisdiction, and to which the penalty of interdiction was to apply.

It is suggested, however, that Caesar's *maiestas* law should not be debated on the basis of *Philippic* 1.9.23, for it is felt that this passage does not furnish the crucial evidence for the law. It is found that none of the authorities consulted seems to have noticed the specific and unambiguous evidence which Cicero in fact furnishes.⁸ Cicero (*Phil.* 1.7.16-1.10.25) attacks Antony for attempting to ratify those *acta* of Caesar which he found in the latter's papers, while promulgating laws which nullify Caesar's real *acta*, the *leges Iuliae*. Antony's introduction of *provocatio* is criticized twice. One of these criticisms has already been discussed (*Phil.* 1.9.23). The other occurs in *Philippic* 1.9.21, 22, where Cicero says that no one is now accused under Caesar's *lex de vi* and his *lex maiestatis*, nor is anyone likely to be: "Nemo reus est legibus illis, nemo quem futurum putemus" (1.9.21). The reason is: "Armis enim gesta numquam profecto in iudicium vocabuntur"⁹ (1.9.21). A precise statement of the content of the *maiestas* law follows. Cicero says that Antony's proposed introduction of *provocatio* is disgraceful, and gives the following reason (1.9.21): "Quid enim turpius quam *qui maiestatem populi Romani minuerit per vim*, eum damnatum iudicio ad eam ipsam vim reverti, propter quam sit iure damnatur?"¹⁰ [*italics mine*]. Cicero himself explains what this statement means when he says that Antony's purpose is to make prosecutions impossible under Caesar's *lex de vi* and his *lex maiestatis*, for neither accusers nor jurors will want to expose themselves to the violence of the

⁸ Zumpt (2.2.476) notices *Philippic* 1.9.21, but simply takes it as further proof that Caesar merely introduced a new penalty. Kytzler (118) discusses *Philippic* 1.21ff., but only in regard to the political implications. Pollack (199.3) relies on *Philippic* 1.9.21, 23 for the view that Caesar's *maiestas* provisions were included in his *lex de vi*.

⁹ It is unlikely that acts done by force of arms will ever be brought to court. (tr)

¹⁰ What is more shocking than that one who has been convicted by a court of having diminished the *maiestas* of the Roman People by violence should turn to that very violence for which he was rightly convicted? (tr.)

hired mob in the Assembly (1.9.22). In other words, one who has been condemned for violence will again resort to violence, for his appeal to the *comitia tributa* will, according to Cicero, inevitably be conducted in violent circumstances. It is suggested that Cicero here gives, although in an abbreviated form, the sole category which was laid down by Caesar's *maiestas* law, namely: *qui maiestatem populi Romani minuerit per vim*.¹¹ It cannot be contended that Cicero here mentions only one of the categories of the *lex*, for he specifically links the violence which will attend the appeal to the violent diminution of *maiestas* which will form the subject-matter of the appeal. Furthermore, he has already said (1.9.21) that prosecutions under Caesar's *maiestas* law are unlikely, because *armis gesta* will probably never be brought to court.

It may be objected that Cicero (*Phil.* 1.9.21-2) does not attribute the *maiestas* law which he is discussing to Caesar, whereas he credits Caesar with the authorship of the laws which prescribed the penalty of *aqua et igni interdictio* for *vis* and *maiestas* (1.9.23). It may therefore be argued that the reference (1.9.21-2) is to a *maiestas* law of someone other than Caesar. The reasoning would be that Cicero makes two separate attacks. The first (1.9.21-2) culminates in the statement that Antony's law does not so much give a right of *provocatio* as destroy the *quaestio* and the *lex de vi*, and the *quaestio* and the *lex maiestatis*: "Non igitur provocatio ista lege datur, sed duae maxime salutes leges quaestionesque tolluntur." The criticism concludes with the assertion that the destruction of these two *quaestiones* will give free rein to "furor tribunicius" (1.9.22), that is, when the *comitia* hears the appeal. Cicero then seems to turn to a second criticism (1.9.23), starting with: "Quid, quod obrogatur . . . interdicti?" It is at this point that for the first time he assigns the laws which he is discussing to Caesar. He then dwells on the fact that *provocatio* will rescind the *acta Caesaris*, by which he means *leges Caesaris* (1.9.23-10.25).

The answer to the objection seems to be that if Cicero (1.9.21-2) does not mean Caesar's *lex de vi* and *lex maiestatis* when he speaks of "duae maxime salutes leges", he must mean laws on these subjects by other authors. As far as *maiestas*

¹¹ Whoever diminishes the *maiestas* of the Roman People by violence. (tr.)

is concerned, he would therefore be referring to an earlier law which laid down the category *maiestas minuta per vim*. This can only be the *lex Appuleia*. It would follow that Antony, for a reason which is not apparent, applied *provocatio* to the *lex Appuleia*, selected at random from the *maiestas* statutes. It seems clear, however, that the law which Antony selected was not the *lex Appuleia*, for there is a significant difference between the law under discussion and Saturninus' law. Cicero says (1.9.22) that the abolition of the *duae maxime salutares leges* will have the following result, among others: "Quid est aliud hortari adulescentis, ut turbulenti, ut seditiosi, ut perniciosi cives velint esse?"¹² It follows that the 'salutary' *maiestas* law applied to *adulescentes* as well as to others. But the *lex Appuleia* was possibly restricted to magistrates and senators (p. 87), and if so it is not the law to which Cicero refers. The application of the law to *adulescentes* also rebuts any suggestion that Caesar merely re-enacted the *lex Appuleia*, for it seems clear that Caesar introduced a new principle by making his law applicable to all classes in so far as the category *maiestas minuta per vim* was concerned.¹³

Furthermore, the subversive effect of *provocatio* on the law which prescribed the category *maiestas minuta per vim* is raised by Cicero at the heart of the attack on Antony for his nullification of Caesar's real *acta*, the *leges Iuliae*. In this context it is not to be assumed that Cicero suddenly went off at a tangent and accused Antony of frustrating the *lex Appuleia* or part of the *lex Cornelia*—laws introduced by persons to whom Antony owed no allegiance, and whose *acta* were not in dispute. Indeed Cicero makes it quite clear that the acts and laws of Sulla are not in issue. In support of his contention that Caesar's laws were his real *acta* he says: "Quaere acta Gracchi; leges Semproniae proferentur; quaere Sullae: Corneliae."¹⁴

¹² It is simply inciting the youth to become turbulent, riotous and destructive citizens. (tr.)

¹³ The position is no different if, as some authorities believe, the *lex Cornelia* was a general law of *maiestas* (p. 69). In that event *maiestas minuta per vim* would have formed one, but only one, of the categories in Sulla's law. It would therefore have to be supposed that Antony restricted *provocatio* to a particular chapter of Sulla's law, which is perhaps even stranger than the random selection of the *lex Appuleia*.

Finally, the law granting *provocatio* is introduced with the words: "*altera promulgata lex est*"¹⁵ (1.9.21). This law being *altera*, the other law promulgated by Antony concerned the third decury, in which Cicero saw the rescission of Caesar's judiciary laws: "*Quid? lege, quae promulgata est de tertia decuria, nonne omnes iudicariae leges Caesaris dissolvuntur?*"¹⁶ (1.8.19). It seems impossible to doubt that all the laws which were 'overthrown' by Antony were *leges Iuliae*. It is therefore found that Caesar's *lex Julia maiestatis* laid down the category "*qui maiestatem populi Romani minuerit per vim*",¹⁷ and that it differed from the *lex Appuleia* in that it extended the scope of the *crimen maiestatis*, at least in its 'violent' form, from magistrates and senators to all classes.

It is suggested that events made the introduction of a law concerning *maiestas minuta per vim* a matter of urgency. The year 47 B.C. witnessed an extraordinary outbreak of violence in Rome, during Caesar's absence in Egypt and the East. The tribunes Dolabella and Trebellius, representing the interests of debtors and creditors respectively, were attempting to settle their differences by gang warfare. Antony's decree

¹⁴ Look for the acts of Gracchus and you will find the Sempronian laws; look for the acts of Sulla and you will find the Cornelian. (tr.) *Phil.* 1.7.18. The possibility that the law which dealt with *maiestas minuta per vim* is an otherwise unsuspected *lex Pompeia maiestatis*, carried in conjunction with Pompey's known *lex de vi* of 52 B.C., is intriguing but untenable. Firstly, Pompey's *lex de vi* created only a special commission to try those concerned in the murder of Clodius and the resulting disturbances (Ascon. 37-9C). Secondly, Cicero refers to Pompey's laws in the passage which demonstrates that the *acta* of Caesar's predecessors were their *leges*: "*Quid? Pompei tertius consulatus in quibus actis constitit? Nempe in legibus*" (What made up the acts of Pompey's third consulship, if not his laws?)

¹⁵ A second law was promulgated. (tr.)

¹⁶ Have not all Caesar's judiciary laws been destroyed by the law which has been promulgated concerning the third decury? (tr.)

¹⁷ And, in so doing, retained the technical concept *maiestas populi Romani*. It is possible that Dio (44.49.3) refers to this *maiestas* law, and the accompanying *lex de vi*, in his version of Antony's funeral oration: *ἀλλὰ σὺ μὲν, ὅπως μὴδ' ὑπὸ τῶν ἐχθρῶν τις φονεύηται, πολλὰ ἐνομοθέτησας, σὲ δὲ οὕτως οἰκτρῶς ἀπέκτειναν οἱ φίλοι* (You introduced a number of laws to protect people against being murdered by their enemies, but you were pitifully slain by your friends). For the relationship between *vis* and *maiestas* see pp. 281-2).

that no private individual was to bear arms in the city having proved ineffective, the Senate gave him full powers for the maintenance of order, including the right to keep troops within the walls. But Antony had to go to Campania to deal with the mutinous veteran legions, and his deputy L. Caesar was unable to check the disturbances. When Antony returned he at first supported Dolabella, and prosecuted Trebellius for appropriating soldiers to his own use; but afterwards he gave secret assistance to Trebellius, allowing him to raise troops. Violence now reached the proportions of a military campaign,¹⁸ with each side occupying vantage points in turn. The situation became so bad that the virgins removed the holy vessels from the temple of Vesta. When the Senate renewed the grant of full powers to Antony, Dolabella appointed a day for consideration of his bills concerning debts and rents. His partisans barricaded the Forum, and prepared to resist any attempt to frustrate the introduction of the bills. Antony thereupon brought a large force down from the Capitol, cut down the tablets advertising Dolabella's laws, and hurled some of the rioters from the Tarpeian Rock. But violence continued until Caesar arrived in October.¹⁹

Two major problems faced Caesar at this stage. He had to prepare for the African campaign, and he had to ensure that while he was away Rome would not be plagued by a repetition of the recent seditious spree. The problem of the African campaign was mainly financial. The veterans in Campania, having been kept out of their promised rewards, were rioting and refusing to go to Africa. They dealt roughly with P. Sulla and Sallust, and marched on Rome, where Caesar was hard put to placate them.²⁰ Caesar resorted to extreme measures in order to raise funds. He persuaded Italian municipalities to donate crowns and statues and, under the guise of borrowing, imposed a levy on cities and individuals (Dio, 42.50.2-3; Nepos, *Att.* 7.3). Some contributions were paid as a form of 'protection money'. For example, Caesar pardoned

¹⁸ Cf. *armis gesta*, Cicero, *Phil.* 1.9.21.

¹⁹ Dio, 42.29.1-33.2; Cf. *Bell. Alex.* 65.1; Plut. *Ant.* 9.1-4; Cic. *Att.* 11.10.2; 11.23.3.

²⁰ Dio, 42.52.1-55.3. See also Rice Holmes, *Republic* 3.232-4; Gelzer, 242-3.

P. Vestrius in Africa, because his brother in Rome had paid over the stipulated sum (*Bell. Af.* 64.2). The assets of Pompey, and probably of many of his supporters, were put up for auction (*Cic. Phil.* 2.26.64; *Dio*, 42.51.2; *Plut. Ant.* 10.3). The problem of keeping the peace in Rome was partly resolved by measures designed to remove the reasons for the economic unrest (*Dio*, 42.51.1-2), but it is suggested that an equally important solution was found in the law "qui maiestatem populi Romani minuerit per vim".

It has been said that Caesar's *maiestas* law was carried in 46 B.C.²¹ But if the law was limited to the category *maiestas minuta per vim*, a date in 47 B.C. is to be preferred. There is no reason to believe that there was any noteworthy outbreak of violence in 46 B.C., but the events of 47 B.C. claim attention with the insistence of a neon sign. The dating of the law to 46 B.C. depends on Suetonius (*Caes.* 42.2): "Poenas facinorum auxit et cum locupletes eo facilius scelere se obligarent, quod integris patrimoniis exsulabant, parricidas, ut Cicero scripsit, bonis omnibus, reliquos dimidia parte multavit."²² Zumpt (2.2.478-9) takes *poenas facinorum auxit* to mean that the penalty of interdiction was introduced for certain crimes, but not all; confiscation was not introduced as an independent penalty, but as an incident of interdiction, and therefore applied only to those crimes for which interdiction was prescribed; interdiction was introduced²³ for parricide, *vis*, and *maiestas*, and therefore it was only in those cases that the additional penalty of confiscation was imposed, of the whole property for parricide, and a half for *vis* and *maiestas*. Zumpt

²¹ Levy, 32; Siber, *Analogie* 22, 66; *Verfassung* 290; Botsford, 455; Rotondi, 422; Rice Holmes, *Republic* 3.284-5. Rein (515) finds it impossible to determine the date. No date is attempted by Pollack, 199.3; Greenidge, *Treason* 234-5; Schisas, 132; Girard, *Leges* 321.1; Kübler, 548; Arangio-Ruiz, 137. It should be noticed that even the authorities who postulate a substantive *maiestas* law of Caesar (cf. p. 155 n. 6) do not attempt to ascertain the possible content of the law. Their approach is simply that Caesar carried some sort of substantive *maiestas* law, and that it may be the *lex Iulia maiestatis* which is attested by the juristic sources (pp. 266ff.).

²² He increased the penalties for crimes; and as the rich were encouraged to commit crimes by the fact that they were exiled with their property intact, he prescribed total confiscation for murderers, according to Cicero, and half-confiscation for others. (tr.)

concludes that Suetonius (loc. cit.) refers, *inter alia*, to the same laws as those which, according to Cicero (*Phil.* 1.9.23), introduced interdiction for *vis* and *maiestas*. As Suetonius places the various events attested by Chapter 42 after Caesar's fourfold triumph in 46 B.C. (*Caes.* 37), it would presumably follow that the *maiestas* law was carried that year. This argument would be valid if it were possible to rely on Suetonius' chronology in Chapter 42. But Rice Holmes (*Republic* 3.234.4—although his dates are rather garbled) has shown that 46 B.C. cannot be inferred as the date of the measure which made loans repayable at pre-war values, merely because Suetonius (*Caes.* 42.2) mentions it at this point, for the evidence of Dio (42.51.1-2) clearly establishes 47 B.C. as the date.²⁴ The possibility that Suetonius also errs in the same passage in regard to the date of Caesar's penal provisions²⁵ cannot be excluded, and there is indeed evidence to support this assumption.

Dio (43.25.1) introduces his account of the legislation of 46 B.C. with the observation that he will omit most of it, mentioning only the most noteworthy laws. It follows that he had a full record of the year's legislation before him, for otherwise he would not have said that he had made a selection. There is no mention in what follows (43.25.1-26.3) of Caesar's introduction of the penalty of interdiction and confiscation, nor of his laws concerning *maiestas minuta per vim* or *vis*.

²³ It is not possible to accept the view (Rein, 515; Greenidge, *Treason* 235) that interdiction was the prescribed penalty for *maiestas* under the *lex Cornelia*, and that therefore Caesar merely restated that penalty, his only innovation being the addition of confiscation. See Levy (30, 33, and particularly 34-9) for the proof that the prescribed penalty under Sulla's law was an actual death sentence, however infrequent its execution may have been as a result of voluntary exile; when *aqua et igni interdictio* was introduced as an actual penalty, it meant a specific sentence of exile, instead of a death sentence.

²⁴ The logical date, it may be added, in view of the economic distress which underlay the violence of that year.

²⁵ On which Rice Holmes is not consistent. He dates the *maiestas* law to 46 B.C. (*Republic* 3.284-5), and the increase of penalty attested by Suetonius *Caes.* 42.3 to 45 B.C. But as Rice Holmes' evidence for the *maiestas* law is only *Philippic* 1.9.23, he clearly fails to identify the penal provisions attested by Cicero with those stated by Suetonius.

But Dio knew of the latter statutes, and attached great importance to them, for he portrays Antony as making a striking point of them in the funeral oration (p. 160 n.17). It is therefore reasonable to suppose that Dio found no record of a *maiestas* law among the laws of 46 B.C. Furthermore, a feature of Suetonius' method should be noticed. His account of the civil war (*Caes.* 30-36) is confined to military matters, ignoring domestic affairs in Rome.²⁶ After discussing the fourfold triumph, rewards to veterans, and public shows (37-39), Suetonius takes up domestic reforms in Chapters 40-44. He had quite a backlog to overtake, for civil administration had scarcely been dormant from 49 to 46 B.C. Suetonius' method obliged him to compress events of different years into a brief résumé, whose position in the work has induced the erroneous belief that all the events to which it refers were contemporaneous.

It has been postulated that the evidence for Caesar's substantive *maiestas* law is not *Philippic* 1.9.23, but *Philippic* 1.9.21-2. This proposition should now be re-examined, for it is necessary to identify the laws to which Cicero refers in *Philippic* 1.9.23. These were either mere penal sections in Caesar's judiciary laws, as Mommsen has contended (p. 155), or they were independent laws which included substantive categories. In the latter event they were the same laws as those *de vi* and *maiestatis* attested in *Philippic* 1.9.21-2, for there is no reason to assume a second pair of Caesarian laws on the subject of *vis* and *maiestas*. It would follow that Cicero discussed the substantive part of the *lex Julia maiestatis* in *Philippic* 1.9.21-2, and the sanction in 1.9.23. It has already been suggested (pp. 157-8) that the two criticisms which Cicero puts forward, namely in 1.9.21-2 and 1.9.23, are both criticisms of the effect of *provocatio* on Caesar's laws *de vi* and *maiestatis*. It should now be pointed out that there is a significant difference in the nature of the two criticisms. In the first criticism (1.9.22) Cicero's point is that the *practical effect* of *provocatio* will be the abolition of *duae maxime salutares leges quaestionesque*, for no accuser or juror will care to expose himself to violence in the Assembly. In the second

²⁶ Except for a brief reference to Caesar's visit to Rome in 49 B.C. *Caes.* 34.

criticism (1.9.23) he poses a *legal consequence*, for he uses the technical term *obrogatio*. Why was *provocatio* subversive of the substantive law (1.9.21-2) in a merely rhetorical sense, but of the sanction (1.9.23) in a technical sense? The answer seems to be that *provocatio* would not, in law, have disturbed the *quaestio*'s function, which was to hand down a verdict on the merits only. The praetor could pronounce only *fecisse videtur* or *fecisse non videtur*, depending on how the jurors voted; if the pronouncement was *fecisse videtur* the penalty followed by operation of law, in accordance with the prescription of the enabling statute (p. 67 n.18). Antony's innovation did not alter the function of the *quaestio*, which continued to pronounce *fecisse videtur* or *fecisse non videtur*. That is why Cicero, when summarizing the substantive category of the law (1.9.21-2), levels only a rhetorical criticism at *provocatio*. The technical criticism—*obrogatur* (1.9.23)—relates to the technical effect of Antony's innovation, which was concerned with what happened *after* condemnation by the *quaestio*. Instead of the penalty following by operation of law, the matter went to the Assembly. It follows that the statutory provision *qui (aliquid) fecit feceritve aqua et igni interdicatur*²⁷ no longer applied, for if it had there would have been no room for the intervention of the Assembly; the penalty would have become enforceable as soon as the *quaestio* pronounced a condemnation, and the accused would have found himself in exile before his appeal was heard. In order to defer execution of the sentence pending consideration by the Assembly, Antony included some provision in his law which led to the necessary inference that the lawgiver intended to repeal the earlier provision *qui (aliquid) fecit feceritve aqua et igni interdicatur*. In this setting "quid, quod obrogatur" (1.9.23) does not mean that Cicero turned to a different set of laws, but to the sanction of the laws which he had already discussed in 1.9.21-2.²⁸

The sanction of the *lex*, as attested by *Philippic* 1.9.23, read with Suetonius *Caes.* 42.3, agrees well with the circum-

²⁷ Whoever has committed or shall commit (some crime) shall be exiled. (tr.)

²⁸ Mommsen's belief that the laws mentioned in 1.9.23 were mere penal sections in Caesar's judiciary laws can also be met by another argument. Before turning to the laws of *vis* and *maiestas*, Cicero disposed of Caesar's judiciary laws entirely, for Antony's introduction of the third decury

stances under which the law was introduced. The substantive category of the *lex* would assist in maintaining order during Caesar's absence in Africa, while the sanction, by including half-confiscation, would contribute to the solution of Caesar's acute financial problems. Finally, it should be pointed out that there can be no suggestion that the law merely established a special court to deal with the disturbances of 47. For Cicero, in the course of his criticisms of Antony's measures, describes the laws *de vi* and *maiestatis* as "populi iussa perpetuasque leges"²⁹ (*Phil.* 1.7.16).

It is possible that another *lex maiestatis* can be attributed to Caesar. In 48 B.C., after Pharsalus, Caesar prohibited Pompeians from returning to Italy, "nisi quorum ipse causam cognovisset"³⁰ (*Cic. Att.* 11.7.2). These *cognitiones* would have been conducted under the absolute discretion over Pompeians which was granted to Caesar. Dio (42.20.1-2), who attests this grant, is at pains to stress that the authority was granted by *lex*, in contrast to the *de facto* discretion which Caesar had previously exercised. It is known that there was a *lex Hirtia* dealing with Pompeians (*Cic. Phil.* 13.16.32); the law was carried in 48 B.C., if this was the year of Hirtius' tribunate;³¹ and the question is therefore whether the law attested by Dio is the *lex Hirtia*.

Cicero (*Phil.* 13.16.32) cites an extract from Antony's letter to Hirtius and Octavian in April 43: "Neminem Pompeianum, qui vivat, teneri lege Hirtia dictitatis".³² Cicero's comment is: "Quis, quaeso, iam legis Hirtiae mentionem facit? cuius non minus arbitror latorem ipsum quam eos, de quibus

rescinded "omnes iudiciariae leges Caesaris" (*Phil.* 1.8.19). After these laws it was the turn of the *lex de vi* and the *lex maiestatis* (1.9.21-3), and it is unlikely that in 1.9.23 Cicero returned to the judiciary laws in order to add a postscript to the epitaph which he pronounced in 1.8.19. Furthermore, when Cicero intended to refer to the judiciary laws he did so expressly—"iudiciariae leges Caesaris" (1.8.19)—and it should not be assumed that "leges Caesaris quae iubent" (1.9.23) is a circumlocution for *leges iudiciariae*.

²⁹ Commands of the People and permanent laws. (tr.)

³⁰ Except those whose cases he himself had investigated. (tr.)

³¹ See Broughton 2.285.3 for the controversy as to the date.

³² You maintain that no living Pompeian is liable under the *lex Hirtia*. (tr.)

lata est, paenitere. Omnino mea quidem sententia legem illam appellare fas non est; et, ut sit lex, non debemus illam Hirti legem putare."³³ This passage would seem to refute the identification of the *lex Hirtia* with Dio's law, unless it is assumed that Dio correctly postulates a *lex*, but either errs as to its terms, or does not purport to give them. Shortly after the Ides of March Antony introduced a law abolishing the dictatorship, and after the abrogation of Antony's legislation Pansa carried a similar law.³⁴ Antony criticized Hirtius and Octavian for treating the *lex Hirtia* as a dead letter, but it would necessarily have fallen away if it had granted powers exclusively to Caesar, either *eo nomine* or as dictator. Therefore Dio's πᾶν ὃ τι ποτ' ἂν ἐθελήσῃ δρᾶσαι³⁵ (42.20.1) cannot be a fair summary of the law's terms,³⁶ but at best an indication of its practical effect. It follows that Hirtius' law would not have directly granted powers to Caesar. Its general effect was that any Pompeian who returned without authority would be punished. In practice the decision rested with Caesar, possibly acting under a *senatusconsultum* which supplemented the *lex*. But Antony would not have raised the question of the law's continued application after Caesar's death, unless it was in terms sufficiently general to admit of its enforcement otherwise than by Caesar personally.

The law, although directed against Pompeians, would not have used the vague term *Pompeiani*. In accordance with the usual language of a criminal statute it would have struck at *qui (aliquid) fecit feceritve*. Is it possible to expand this to *qui arma contra populum Romanum tulerunt*³⁷ (cf. *Dig.* 48.4.1.1), and so to postulate a *lex Hirtia maiestatis*? The proposition is

³³ Who on earth still refers to the *lex Hirtia*? I imagine that its author regrets it as much as those against whom it was aimed. In my view it is quite wrong to call it a law. But even if it is a law, we should not regard it as a law of Hirtius. (tr.)

³⁴ Dio, 44.51.2; Cic. *Phil.* 1.3; 5.4.10. Cf. Rotondi, 434; Broughton, 2.316, 335.

³⁵ To do whatever he deemed fit. (tr.)

³⁶ It is not suggested that a grant to Caesar personally was impossible. A *lex* had given Sulla similar powers: "ille, de quo legem populus Romanus iusserat ut ipsius voluntas ei posset esse pro lege" (The Roman People enacted that his discretion was to have the force of law) (Cic. *Verr.* 2.3.35. 82). But the point is that such a law would have lapsed on Caesar's death.

³⁷ Whoever bears arms against the Roman People. (tr.)

feasible if the MSS. reading of *Philippic* 13.16.32 is retained: "Neminem Pompeianum . . . teneri lege Hirtia dignitatis."³⁸ A *lex Hirtia dignitatis* looks rather like a *lex maiestatis*. But Orelli's emendation *dictitatis* has been generally accepted.³⁹ Orelli was presumably influenced by the absence of a principal verb in the MSS., but as *teneri* may also be corrupt,⁴⁰ it may be thought that *tenetis*—*teneri* (*e*) is at least as probable as *dictitatis*—*dignitatis* (*-tes*). Even with *dictitatis*, however, it is possible that Hirtius dealt with something like "bearing arms against the Roman People".

What of Cicero's "et, ut sit lex, non debemus illam Hirti legem putare" (*Phil.* 13.16.32)? This may simply mean that the law should be attributed to Caesar, who instigated it, rather than to Hirtius, who proposed it. But Pocock⁴¹ submits convincing arguments in support of his belief that some of Caesar's laws in 59 B.C. were proposed by Vatinius, and were known indifferently as Julian laws and laws of Vatinius; he goes on to propound the general principle that a consul might employ a tribune to introduce a law, but might himself take so active a part in the proceedings that the law was credited either to the tribune or to the consul. If a similar position is assumed for a dictator and a tribune—an assumption which is not necessary, for Caesar was in any event consul in 48 B.C.—Cicero's meaning may be that the *lex Hirtia* should really be known as a *lex Julia*.

³⁸ Codd. quidam: *dignitates*.

³⁹ A. C. Clark, *M. Tulli Ciceronis Orationes* (Oxford 1900); G. Long, *M. Tulli Ciceronis Orationes*, Vol. 4 (London 1858); W. C. A. Ker, *Cicero: Philippics*, Loeb ed. (1926).

⁴⁰ Codd. quidam: *tenere*.

⁴¹ 161-8; cf. Mommsen, *Straf* 654 and n.2.

PART THREE

Maiestas in the Augustan Principate

A Lex and some Conspiracies

A. LEX PEDIA (MAIESTATIS)

"*Qui parentem meum interfecerunt, eos in exilium expuli, iudiciis legitimis ultus eorum facinus*"¹ (*Res Gestae* 2). The *iudicia legitima* to which Augustus refers were conducted before a *quaestio* created by the *lex Pedia*, which was proposed by Q. Peditius, Octavian's fellow-consul in 43 B.C.² The penalty was interdiction³ and confiscation—apparently total (Dio, 46.48.4). The *lex* appears to have made express provision for trials *in absentia*⁴ and for rewards to accusers (Dio, 46.49.3). Mommsen⁵ says that the crime comprehended by the *lex* was *perduellio*. Although most of the sources emphasize that the law was intended to punish Caesar's murderers,⁶ Plutarch (*Brut.* 27.3) seems to have had a clearer understanding of the legal position: δίκας φόνου κατὰ τῶν περὶ τὸν Βροῦτον εἰσήγεν ὥς ἄνδρα πρῶτον ἐν ἀρχαῖς ταῖς μεγίσταις ἀνηρηκότων ἄκριτον⁷— a

¹ I drove my father's murderers into exile, punishing their crime by lawful process. (tr.)

² Vell. 2.69.5; Suet. *Nero* 3.1; *Galba* 3.2; Livy, *Per.* 120; Appian, *B.C.* 3.14.95; Plut. *Brut.* 27.3; Dio, 46.48.2-3. But see p. 283.

³ *Res Gestae* 2; Vell. 2.69.5; Suet. *Nero* 3.2.

⁴ Livy, *Per.* 120; Suet. *Aug.* 10; Appian, *B.C.* 3.14.95; Plut. *Brut.* 27.3; Dio, 46.48.3.

⁵ *Straf* 199.3; cf. Levy, 33; Volkmann, 26.

⁶ Livy, *Per.* 120: "in eos quorum opera pater occisus est"; Vell. 2.69.5: "qui Caesarem patrem interfecerant"; Suet. *Nero* 3.1: "conscios Caesarianae necis"; Appian, *B.C.* 3.14.95: φόνου.δίκας ἐπὶ Καίσαρι; *Res Gestae* 2; Dio, 46.48.2-3.

⁷ He prosecuted Brutus and his accomplices for the murder, on the ground that they had killed the man who held the highest magistracy, without trial. (tr.).

reasonably accurate statement of a *maiestas* charge under *Digest* 48.4.1.1: "cuiusve opera consilio malo consilium initum erit quo quis magistratus populi Romani quive imperium potestatemve habet occidatur."⁸ This *Digest* passage expresses the characteristic feature which made murder *maiestas*, namely the fact that the victim was a magistrate; it also expresses the typical *maiestas* provision whereby *socii criminis* were liable. The sources particularly notice a similar provision of the *lex Pedia*: τοὺς μὲν αὐτόχειρας τοὺς δὲ συνεγνώκῃναι μόνον⁹ (Appian, *B.C.* 3.14.95); οὐχ ὅπως οἱ τε αὐτόχειρες . . . καὶ οἱ συνομόσαντές οφισιν, ἀλλὰ καὶ ἄλλοι πολλοί, οὐχ ὅτι μὴ ἐπιβουλεύσαντες . . . ἀλλ' οὐδὲ ἐν τῇ πόλει τότε γε ὄντες¹⁰ (Dio, 46.48.3). Appian (*B.C.* 3.14.95) also says that the category of accomplices included some who were not in Rome when Caesar was murdered. A striking case is the conviction of L. Domitius, merely because he went to join Brutus and Cassius (Suet. *Nero* 3.1); but this may have been a doubtful extension of the *lex*, for he alone of those convicted under the *lex Pedia* was subsequently allowed to return, and was fully reinstated (Suet. *Nero* 3.2).¹¹

Despite the legitimate basis claimed by *Res Gestae* 2, punishment was not always confined to interdiction, for after Actium Cassius Parmensis, "the last of Caesar's murderers", was executed at the order of Octavian (Vell. 2.87.3). In the same passage Velleius says that Trebonius had been the first of Caesar's murderers to suffer the death penalty; the reference is to Dolabella's execution of Trebonius in Asia in March 43.¹² Syme (172) believes that the charge was high treason, arising

⁸ Through whose instrumentality and wrongful intent a conspiracy is formed to kill a magistrate of the Roman People or a holder of *imperium* or *potestas*. (tr.).

⁹ Some as perpetrators, others as accomplices. (tr.).

¹⁰ Not only the perpetrators and accomplices, but also many who had no part in the plot and were not even in Rome at the time. (tr.).

¹¹ The *lex Pedia* was enforced more strictly than the proscriptions. The treaty of Misenum with Sex. Pompey allowed the proscribed to return, but excluded those condemned under the *lex Pedia*. Appian, *B.C.* 5.72; cf. Vell. 2.77.2. See also Volkmann, 27.

¹² Cicero (*Phil.* 11.1-4) who suggests some sort of trial. Appian *B.C.* 3.3.26 and Dio 47.29.3 attest a summary execution, but Cicero is probably more accurate. Cf. Münzer, *RE* 6A.2281.

out of the assistance given by Trebonius to Brutus and Cassius. But the event took place before Octavian's consulship, and therefore before the *lex Pedia*. It may be that the Caesarians were already experimenting with legal principles on which to base proceedings against the 'liberators'. This suggestion receives some support from Suetonius (*Aug.* 10), who asserts that Octavian, immediately on his arrival in Rome from Appollonia, decided "Brutum Cassiumque . . . legibus adgredi reosque caedis absentes deferre";¹³ there was perhaps much debate as to the *leges* which could be invoked. The *lex Appuleia* would not have served, for even the murder of Saturninus himself had had to be prosecuted *apud populum* (pp. 32-3). The *lex Cornelia de sicariis et veneficis* was no doubt available, but a more imposing tag than common law murder was needed. But it is not certain that any form of *maiestas* was the pretext for Trebonius' execution. The only charge mentioned by Cicero (*Phil.* 11.2.5) is extortion in connection with Trebonius' governorship of Asia: "quaestionem habuit pecuniae publicae". The reference is probably to the funds which Trebonius had supplied to Brutus and Cassius (Münzer, *RE* 6A.2281). This would have made Trebonius a *socius criminis* under the subsequent *lex Pedia*, and the Caesarians may have already had such a principle in mind. The difficulty is that Cicero does not mention the far more obvious complicity of Trebonius by his detention of Antony while Caesar was being murdered; but perhaps the events of the Ides of March were something on which Cicero did not care to dwell. Appian (*B.C.* 3.3.26) makes good Cicero's omission; Dolabella's soldiers mutilated Trebonius' body because he had taken part in the murder of Caesar by detaining Antony in conversation.

In 43 B.C. the praetor Q. Gallius, a brother of Antony's lieutenant M. Gallius, approached Octavian to ask for the command of Africa, and used the opportunity thus offered to plot against him. His colleagues removed him from office, the multitude destroyed his house, and the Senate condemned him to death. Octavian ordered him to go to his brother. He boarded a ship and was never seen again (Appian, *B.C.*

¹³ To invoke the laws against Brutus and Cassius and to prosecute them in their absence for the murder. (tr.)

3.14.95). Suetonius (*Aug.* 27) gives two versions of this case. He first says that Gallius, while making a *salutatio* to Octavian, clutched writing-tablets under his robe. Octavian suspected that he had a sword, but did not have him searched at once, in case he was mistaken. But shortly afterwards Gallius was arrested by troops while presiding over a court—"raptum e tribunali"—and tortured. Although he admitted nothing, Octavian himself tore out his eyes and ordered him to be executed. This version, which was apparently derived from an anti-Augustan source,¹⁴ is followed by the second version, that of Octavian himself,¹⁵ to the effect that Gallius, having sought an audience, treacherously attacked him, whereupon he was arrested. Octavian then sentenced him to interdiction—*urbe interdicta*—and sent him away. Gallius perished by shipwreck or at the hands of pirates.

The problems concern the nature of the crime and the means by which it was punished. The hostile tradition alleges summary *coercitio*, which is quite feasible, for Octavian was already consul.¹⁶ Appian and Octavian himself report a trial,¹⁷ but only Appian says it was in the Senate. Volkmann (31-2) rejects an exercise of *coercitio*, and considers whether Octavian's apparent failure to mention the senatorial trial, which would have tended to exonerate him, is due to falsification by Suetonius, or whether Appian's assumption of a senatorial court in this period is an anachronism. Volkmann's conclusion is that although the Senate had already voted a 'last decree' in favour of Octavian earlier in 43, and although he retained his powers under the decree when he became consul, he preferred to consult the Senate again on this specific case, as Cicero had done in the case of those involved in the conspiracy of Catiline.

The difficulty is the allegation in Suetonius' first version that there was an interval between the attempt and the subsequent arrest while Gallius was presiding over a court.

¹⁴ "In eadem hac potestate multiplici flagravat invidia" (Suet. *Aug.* 27).

¹⁵ Presumably in the lost "*de vita sua*" (Appian, *B.C.* 3.14.95).

¹⁶ This appears from Appian (*B.C.* 3.14.95), who reports this case as having taken place at the same period as the trials under the *lex Pedia*.

¹⁷ It is not clear how Mommsen (*Straf* 406.1) extorts from Suetonius the information that Octavian denied on oath that Gallius was tortured.

The hostile tradition really amounted to this: 'A praetor, while discharging the duties of his office, was unlawfully seized by troops, unlawfully tortured, and unlawfully put to death. The pretext was that he had attempted to murder Octavian. But no action was taken at the time of the alleged attempt—clearly because there never was one'. The anti-Octavian tradition had a contemporaneous origin in the pleasantries exchanged between Antony and Octavian from 44 B.C. onwards (Carcopino, *Cicero* 391-5), and it is unlikely that an allegation so easily verifiable as the arrest of a praetor *e tribunali* would have been contemporaneously circulated if it had been untrue. But the hostile tradition, minus the embellishments, is only partly accurate, for it does not suggest an alternative to attempted murder as the basis of the proceedings against Gallius. His real offence may be linked to the Pedian *quaestio*. Octavian surrounded it with troops in order to encourage the jurors, and even then there was a dissentient vote by P. Silicius Corona.¹⁸ Corona did openly what many others would have done but for the presence of the troops (Dio, 46.49.5), and although no immediate action was taken against him, he was afterwards proscribed and executed (Dio, 46.49.5; App. *B.C.* 3.14.95). The praetor presiding over the *quaestio*¹⁹ may well have had something to do with the jurors' reluctance to see the light, and Gallius was a praetor, and well qualified for an anti-Caesarian role. Another Q. Gallius, praetor in 65 B.C., presided over the *maiestas* trial of the *popularis* C. Cornelius (v.d. Mühl, *RE* 7.672). M. Gallius, brother of the present Q. Gallius, fought with Antony at Mutina; Tiberius, adopted by him in his will, refused the name 'Gallius' as being that of an opponent of Augustus (v.d. Mühl, *RE* 7.672). It should also be noticed that Appian (*B.C.* 3.14.95) indicates a close connection between the Pedian *quaestio* and Gallius, when he discusses the latter's crime immediately after²⁰ his report of the proceedings before the Pedian court and the proscription of Corona.

If Gallius presided over the Pedian court, his real offence

¹⁸ Plut. *Brut.* 27.3; Dio, 46.49.4-5; Appian, *B.C.* 3.14.95; 4.427.

¹⁹ McFayden (236) believes that Octavian presided as consul.

²⁰ ταῦτο δὲ ταῖς ἡμέραις.

was his association with those who strove for an acquittal. But as this was not indictable, an alternative had to be found. An alleged assassination attempt had two advantages. Men's minds would be diverted from the show of force which had accompanied the trials, and there were interesting prospects of extensive interpretation. The *lex Pedia* may originally have referred only to Caesar's murderers, but it was now sought to extend it to any conspiracy "quo quis magistratus populi Romani occidatur".²¹ This is where the assistance of the Senate was invoked. It is probable that prior to the Principate the Senate was no more than a *consilium* to the consuls,²² but in this capacity it had the power to interpret laws, including the extension of their scope.²³ It is therefore possible that the senatorial 'death sentence' on Gallius which Appian attests was an interpretative decree extending the *lex* to any attempt to murder a magistrate. The rule attested by *Digest* 48.4.1.1 would then be the *lex Pedia* as extended by the Senate. Appian was not always clear as to the distinction between interdiction and an actual death sentence followed by voluntary exile (cf. p. 93), so that his ἡ βουλὴ κατεγίνωσκε θάνατον (*B.C.* 3.14.95) need not be taken literally. Octavian, fortified by the *senatusconsultum*, and at large to prosecute Gallius as a result of his removal from office (Appian, *B.C.* 3.14.95), may have

²¹ Whereby a magistrate of the Roman People was killed. (tr.). Cf. *Digest* 48.4.1.1. It was probably in this extended form that the *lex* was known to Plutarch (*Brut.* 27.3); cf. p. 171.

²² Mommsen, *Staat* 2.1.124.2; *Straf* 252; cf. Gaudemet, 336; McFayden, 243; Marsh, *Tiberius* 118-9; Hammond, 172; Jones, *Jurisdiction* 480-1. Some authorities believe that the case of the Catilinian conspirators was a precedent for the exercise by the Senate of a judicial (Dessau, 1.140; Lenge, *Straf* 61) or a quasi-judicial (Volkman, 95-6) function. Siber (*Verfassung* 290) holds that the Senate's jurisdiction in *maiestas* cases derived from Caesar's *maiestas* law, which has no foundation if Caesar's law has been correctly reconstructed (Chapter 9). Jones (*Jurisdiction* 481-4) finds the origin of the Senate's jurisdiction in the *lex Julia de vi publica*, which means a date well in the Augustan Principate—unless the Julian laws *de vi* were Caesarian. For the *hostis* declaration as the assumed origin of the Senate's jurisdiction in *maiestas* cases see Bleicken, *Senatsgericht*, 21ff. See also *ibid.* 30ff. for a re-examination of the whole question of the Senate's criminal jurisdiction in the early principate.

²³ Krüger, 25 and n.9; Girard, *Leges* 321.1; Gaudemet, 337, 339; Jones, *Jurisdiction* 481; Marsh, *Tiberius* 118.

charged him with *maiestas* '*lege Pedia*', and secured a sentence of interdiction.

Q. Salvidienus Rufus, a friend of Octavian's youth, played a prominent part in the fighting of 42-1 B.C., was given the governorship of Gaul in 40, and was designated as consul, although he had not held the lower offices (Münzer, *RE* 1A. 2019-20). His close relationship with Octavian appears from the fact that he and Agrippa were Octavian's advisers in Apollonia (Vell. 2.59.5), while Cicero was able to ask: "Quid inter Salvidienum et eum (sc. Caesarem) interest?"²⁴ (*Brut.* 1.17.4). According to Appian (*B.C.* 5.7.66), Antony disclosed to Octavian, after the pact of Brundisium, that Rufus had secretly negotiated with him with a view to taking the Gallic legions over to him. Dio (48.33.1) says that he was suspected of having plotted against Octavian, while he is referred to by Livy (*Per.* 127) as "*consilia nefaria adversus Caesarem molitum*",²⁵ and by Suetonius (*Aug.* 66.2) as "*res novas molientem*".²⁶ Velleius (2.76.4) attests his "*scelesta consilia*".²⁷

Appian (*B.C.* 5.7.66) says that Octavian summoned Rufus from Gaul on a pretext, and on his arrival confronted him with the evidence and executed him; as his army was suspect it was transferred to Antony. A trial in the Senate is attested by Suetonius (*Aug.* 66.2)—"*damnandum senatui tradidit*"—and by Dio (48.33.3), who goes on to attest his execution as the enemy of Octavian and the People followed by a thanksgiving and a 'last decree' in favour of the triumvirs. But Livy (*Per.* 127) says that after his crime was revealed by his own evidence, he was condemned and committed suicide.

The real difficulty is the nature of the crime. If Appian's version gives the whole story, Rufus' offence was a secret approach to Antony, with a view to deserting Octavian and taking the army of Gaul over to him. Rufus presumably held Gaul as Octavian's legate (Dio, 46.55.3), but it was only by the pact of Brundisium that Gaul was allocated to Octavian (Dio, 48.28.4), whereas Rufus perpetrated his treachery before this.

²⁴ What difference is there between Salvidienus and Octavian? (tr.)

²⁵ Forming an abominable conspiracy against Octavian. (tr.)

²⁶ Stirring up revolution. (tr.)

²⁷ Wicked plot. (tr.)

It may well be that Octavian was *de facto* master of Gaul from July 40, but even if he held it from that date under a legal title recognized by his triumviral colleagues it would be difficult to bring a legate's breach of trust under the crime of *maiestas*, for by deserting Octavian for Antony Rufus would merely have gone from one limb of the constituent authority to another. It does not help to suppose that Rufus' crime was leaving his province *iniussu populi aut senatus*, for in the first place he did not leave, but only thought of doing so, and *maiestas* by intent, without an overt act, was still far in the future;²⁸ secondly, on Appian's version the proposed crime would have been departure *iniussu Caesaris*, the authority of People or Senate being irrelevant.

The similarity of the language used in regard to the trials of Rufus and of Libo Drusus in A.D. 16 is striking. Where Rufus was guilty of "*consilia nefaria*" (Livy, *Per.* 127) and "*scelestia consilia*" (Vell. 2.76.4), Libo was charged with "*nefaria consilia*"²⁹ and "*sclerata consilia*" (Vell. 2.130.3). Rufus is reported as "*res novas molientem*" (Suet. *Aug.* 66.2), Libo as "*moliri res novas*" (Tac. *Ann.* 2.27.1; cf. Vell. 2.129.2). Rufus aspired to a position "*e quo infra se et Caesarem videret et rem publicam*"³⁰ (Vell. loc. cit.); Libo is described as "*maiora sperans quam illo saeculo quisquam sperare poterat*"³¹ (Seneca, *Ep.* 70.10). In both cases guile was used to trap the suspect. Octavian summoned Rufus urgently, giving out that he would return him to his army immediately after consulting him (Appian, *B.C.* 5.7.66); Tiberius played cat and mouse with Libo (Tac. *Ann.* 2.28.2-4; cf. Suet. *Tib.* 25). The downfall of both Rufus (Dio, 48.33.3) and Libo (Tac. *Ann.* 2.32.3-4; Dio, 57.15.5) was marked by a thanksgiving. A 'last decree' of the Senate followed the condemnation of Rufus (Dio, 48.33.3), and it is probable that the Senate also declared Libo a *hostis* and gave plenary powers to the consuls (Marsh, *Tiberius* 120; McFayden, 244). Libo's consultation of astrologers in regard to his future greatness (Tac. *Ann.* 2.27.2, 30.1) is of a similar

²⁸ For the *lex quisquis* of A.D. 397 see Kübler, 554-8.

²⁹ *Fasti Amerlini*, cited by Furneaux, 1.316.12.

³⁰ Above Octavian and the State. (tr.)

³¹ Aspiring higher than anyone had been able to aim in that age. (tr.)

order to the flame which issued from Rufus' head in his youth (Dio, 48.33.2). Libo was guilty of a serious attempt against the State,³² and there seems little doubt that Rufus' crime fell in the same category. The information which Antony gave to Octavian was probably not the only evidence on which the indictment was based. There was probably a conspiracy, which may have had widespread popular support, for Appian (B.C. 5.7.66) says that Antony incurred general unpopularity as a result of his disclosure. That the plot came very close to success is not only shown by the last decree and the thanksgiving, but is also suggested by the strong implication of a catastrophic fall in Dio's ἄλλ' οὐδέν γὰρ τῶν ἀνθρωπίνων βέβαιόν ἐστι³³ (48.33.3). It is not impossible that the reconciliation between Octavian and Antony at Brundisium was prompted by the need to meet the threat posed by Rufus.

Volkman (33) believes that in Rufus' case the Senate's function was very close to that of the later senatorial court. He argues that, whereas previously there was a decree followed by legal proceedings, now there was first a prosecution and then a decree and thanksgiving. This appears to be the sequence given by Dio (48.33.3), but Dessau (1.23.140; cf. Lengle, 62) seems to understand Dio differently when he finds an exact parallel between the case of Rufus and that of the Catilinian conspirators; this is to assume a 'last decree' before, and not after, the execution. The main argument against a senatorial trial of Rufus is that, unlike Q. Gallius, his removal from office is not attested, so that no trial of any sort would have been competent. It is possible that this case is another example of a *senatusconsultum* giving an extensive interpretation, but not a judgment. The conspiracy undoubtedly included a plot to kill Octavian. The Senate having declared that this fell under the *lex Pedia*, it was clear to Rufus that a trial before the *quaestio maiestatis* would be a mere formality. He chose the alternative of suicide, which may well be the true manner of his death, although it is attested only by Livy (*Per.* 127).

³² Marsh, *Tiberius* 120, 292; Rogers, *Trials* 12, 14, 16, 18-20.

³³ Human affairs are never certain. (tr.)

B. FOUR AUGUSTAN MAIESTAS TRIALS

The execution of M. Aemilius Lepidus, son of the triumvir, in 31 B.C.³⁴ or 30 B.C.,³⁵ seems to have been a summary matter. Velleius (2.88) says that Lepidus had conspired to murder Octavian when he returned to Rome. Maecenas, who was *urbis custodiis praepositus*, unearthed the plot with quiet efficiency, and without any public upheaval crushed 'the monstrous attempt to revive the civil war'. Lepidus was executed, and his wife Servilia committed suicide by swallowing live coals.³⁶ In view of Velleius' insistence on Maecenas' smooth handling of the matter, Appian (*B.C.* 4.50.217) is probably wrong when he says that Maecenas sent Lepidus to Octavian, who executed him at Actium. None of the sources³⁷ suggests a trial, and indeed Velleius' assertion that Lepidus was crushed with remarkable speed and without any disturbance (2.88.3) is positive evidence of summary *coercitio*.

The fall in 26 B.C. of the great Roman knight, C. Cornelius Gallus, the first prefect of Egypt, is the subject of an extensive, but not always clear, tradition.³⁸ Volkmann (115-9) traces two stages in the catastrophe. In the first stage there were proceedings in Augustus' domestic tribunal. The allegation, according to Dio (53.23.5), was 'hybris', manifested in participation in idle gossip about Augustus (cf. Ovid, *Trist.* 2.445-6), the setting up of statues of himself throughout Egypt, and the inscription of his deeds on the pyramids.³⁹ Suetonius (*Aug.* 66) attests his "ingratum et malivolum animum" and, more specifically (*De Gramm.* 5 (16), his friendly reception of Caecilius, who had made an attempt on the chastity of Agrippa's wife, the daughter of Caecilius' patron, Atticus. The punishment

³⁴ Volkmann, 13; Rhoden, *RE* 1.1.561; Syme, 298; McFayden, 237.

³⁵ Sattler (29 and n.67), referring—probably correctly—to Velleius, 2.88.1, 87.1.

³⁶ Siber (*Verfassung* 266) misunderstands Velleius 2.88.3 to mean that Lepidus was burnt alive.

³⁷ Vell., 2.88; Appian, *B.C.* 4.50.216-8; Livy, *Per.* 133; Suet. *Aug.* 19; Dio, 54.15.4; Sen. *Clem.* 1.9.6; *Brev. Vit.* 4.5.

³⁸ Dio, 53.23.5-24.1; Suet. *Aug.* 66; Suet. *De Gramm.* 5 (16); Ammianus, 17.4.5; Servius ad *Georg.* 4.1; Servius ad *Eclog.* 10.1; Ovid, *Trist.* 2.445-6; *Amores* 3.9.63-4.

inflicted by Augustus was, in general terms, *renuntiatio amicitiae*.⁴⁰ In Gallus' case this meant exclusion from the emperor's house and the imperial provinces (Suet. *Aug.* 66; Dio, 53.23.6). The normal result of *renuntiatio* was *domo interdicti*,⁴¹ which in Gallus' case was extended to *provinciis suis interdicti*⁴² (Suet. *Aug.* 66; cf. Dio, 53.23.6).

In the second stage (Volkman, 116-9) there were criminal proceedings against Gallus, but neither the charge nor the forum is clear. Suetonius (*Aug.* 66) says that Gallus was driven to suicide by the denunciations of accusers and by decrees of the Senate. His meaning can be gathered from Dio (53.23.6-7) who, after saying that the *renuntiatio amicitiae* by Augustus was followed by numerous indictments, continues: *καὶ ἡ γερουσία ἅπανα ἁλῶναι τε αὐτὸν ἐν τοῖς δικαστηρίοις καὶ φυγεῖν τῆς οὐσίας στερηθέντα . . . ἐψηφίσατο. καὶ ὁ μὲν περιαλγῆσας ἐπὶ τούτοις ἑαυτὸν προκατεχρήσατο*.⁴³ This passage has been taken by some authorities to mean a trial and condemnation by the Senate,⁴⁴ but others⁴⁵ have rightly detected that *ἐν τοῖς δικαστηρίοις*⁴⁶ is against that view. Volkman (117-9), asking how the Senate could decide that the accused be condemned by a *quaestio*, suggests that only senatorial magistrates could be brought before the *quaestio de repetundis* (cf. pp. 87-88). As Gallus was a knight the *quaestio* did not have jurisdiction, and therefore

³⁹ Syme (309) draws attention to *ILS* 8995, 11. 4ff: "exercitu ultra Nili catarhacten transducto, in quem locum neque populo Romano neque regibus Aegypti arma ante sunt prolata, Thebaide, communi omnium regum formidine, subacta" (He led his army beyond the cataract of the Nile to a region never reached by the armies of the Roman People or the kings of Egypt. He subdued Thebes, that object of awe to all kings)—achievements which Dessau (2.2.647) describes as "nicht gerade ausserordentlichen Heldentaten".

⁴⁰ Renunciation of friendship. (tr.) Volkman, 106, 116; Syme, 309; McFayden, 237.

⁴¹ Exclusion from the emperor's house. (tr.)

⁴² Exclusion from the imperial provinces. (tr.)

⁴³ The Senate unanimously resolved that he be convicted in a jury-court and sentenced to exile and confiscation of property. He was so distressed at this that he anticipated the trial by suicide. (tr.)

⁴⁴ Stein, *RE* 4.1345; Sattler, 11; Mommsen, *Staat* 2.1.119.4.

⁴⁵ Dessau, 1.140; Hammond, 174; Syme, 309; McFayden, 237.

⁴⁶ In a jury-court (tr.)

the Senate intervened and tried the case. This view is based on the assumption that the criminal case was *de repetundis*, for which the only evidence is Ammianus 17.4.5, and his evidence should be received with caution (Stein, *RE* 4.1345). Dio (53.23.6), whose account is the most detailed of all the sources, attests γραφὰς κατ' αὐτοῦ πολλὰς⁴⁷ after the domestic proceedings, without specifying the charges. Servius (*ad Eclog.* 10.1) says that Gallus, an intimate of Augustus, "cum venisset in suspicionem quod contra eum coniuraret, occisus est".⁴⁸ Satler (11) rejects Servius, arguing that a conspiracy by Gallus is not otherwise attested, and his name does not appear in the lists of conspirators in Seneca (*Brev. Vit.* 4.5; *Clem.* 1.9.6) or in Suetonius (*Aug.* 19.1). This argument is not conclusive, for Seneca expressly says that his lists are not complete (*Clem.* 1.9.6; *Brev. Vit.* 4.5), while Suetonius (*Aug.* 19.1) omits known conspiracies, such as that of Cn. Cornelius Cinna (pp. 193-97).

A possibility which does not seem to have been explored is that the judgment of Augustus in his domestic tribunal was not a final judgment, so that condemnation there did not entitle the accused to plead *res iudicata* when charged on the same facts in a public tribunal. It was a recognized principle that absolution by a *paterfamilias*, or person in an analogous position, did not prevent a subsequent prosecution in a State tribunal (Strachan-Davidson, 1.30-1), and there is nothing against a similar rule when the domestic court condemned. That the criminal proceedings were based on the same facts as the domestic trial seems to follow from Augustus' 'complaint' that while the zeal of the Senate was to be commended, it was regrettable "quod sibi soli non liceret amicis quatenus vellet irasci"⁴⁹ (Suet. *Aug.* 66). It is therefore possible that the 'numerous charges' against Gallus included the acts of arrogance for which Augustus had already punished him privately. If this is so, it is possible that in the case of Gallus, as in the case of Salvidienus Rufus, the Senate did not try the case, but gave

⁴⁷ A number of charges against him. (tr.)

⁴⁸ Was suspected of conspiring against him and was executed. (tr.)

⁴⁹ That he alone was not able to set limits to his anger against his friends. (tr.)

an extensive interpretation. The Senate may have been called upon to say that what Gallus had done in Egypt could be adjudicated upon by the *quaestio maiestatis*. The principle involved may have been that enunciated in *Digest* 48.4.3: "quive privatus pro potestate magistrature quid sciens dolo malo gesserit".⁵⁰ Gallus can properly be described as a *privatus*, for he was appointed by and responsible to Augustus alone (Dessau, 2.2.644; cf. Syme, 330); and what he did may well have been interpreted as a usurpation of his master's functions. Gallus, like Rufus, committed suicide when the Senate's interpretation made condemnation by the *quaestio maiestatis* inevitable. If the case was brought within the ambit of *maiestas*, the layman Servius may well have failed to detect the subtle distinction between conspiracy and other forms of the crime.

Two cases in the *quaestio maiestatis* can conveniently be taken together, namely the trial of Marcus Primus and that of Fannius Caepio and Varro Murena.⁵¹ According to Dio (54.3.2-4), the sole source for Primus, the charge was that as governor of Macedonia he left his province to make war on the Thracian Odrysae. His defence was that he had acted with the authority of Augustus, alternatively of Marcellus.⁵² Augustus went to court of his own accord, was asked by the praetor if he had ordered the accused to make war, and denied it. Murena, who defended Primus, insolently asked Augustus what he was doing there, and who had summoned him, to which the reply was simply: τὸ δημόσιον.⁵³ Although Dio does not

⁵⁰ Any private citizen who knowingly and with wrongful intent exercises the function of a magistrate. (tr.)

⁵¹ Grant (84.6) believes that the trial of Primus was in the Senate. For the correct view that it was in the *quaestio maiestatis* see Volkmann, 53, 55; Atkinson, 440; Jones, *Jurisdiction* 487; Kelly, 46; Sattler, 62; Hammond, 174. Hanslik (*Murena* 286) and Sattler (64) believe that the Senate tried Caepio and Murena. If the majority view that it was the *quaestio maiestatis*—Volkmann, 56; McFayden, 237; Atkinson, 464 and n.116; Kelly, 14; Jones, *Jurisdiction* 487; Fluss, *RE* 5A. 709; Dessau, 1.50; Siber, *Review of Vittinghoff* 227—needs any corroboration, it is furnished by Dio's statement (54.3.6) that because some jurors voted for acquittal a law was introduced prohibiting secret voting when the accused was not present; there was never any question of secret voting in the Senate.

⁵² τὸτὲ μὲν τῇ τοῦ Αὐγούστου τὸτὲ δὲ τῇ Μαρκελλοῦ γνώμῃ τοῦτο πεποιηκέναι.

⁵³ The public interest. (tr.)

expressly attest a conviction, it seems to follow from his assertion that quite a number of jurors voted for an acquittal.^{53a} In the case of Caepio and Murena there was a conspiracy against Augustus, led by Caepio, with Murena accused of complicity (Dio, 54.3.4). The plot was disclosed by one Castricius (Suet. *Aug.* 56.4), and Tiberius prosecuted (Suet. *Tib.* 8.1). The accused did not appear, were condemned *in absentia*, and were executed soon afterwards. Murena's brother Proculeius and his brother-in-law Maecenas were unable to save him. A thanksgiving was voted (Dio, 54.3.5, 8).

The crucial problem is the date of these trials. Dio (54.1.1; 54.3.2-5) assigns both to the consulship of M. Marcellus and L. Arruntius, that is, 22 B.C. His date would never have been doubted were it not for the fact that the *Fasti Capitolini*⁵⁴ record that in 23 B.C. A. Terentius Varro Murena was consul with Augustus, and that something which is not clear from the fragment happened to him in office, with the result that Cn. Calpurnius Piso became *consul suffectus* in his stead. The vital part of the inscription is that which has been reconstructed by Mommsen to read "in mag (istratu) mort(uus) est",⁵⁵ but which other authorities⁵⁶ read as "in magistratu damnatus est".⁵⁷ Those who accept the latter reading⁵⁸ argue that the consul of 23 B.C. is to be identified with the conspirator who was tried and executed with Fannius Caepio. It would follow that this trial would have to be dated to 23, and as the trial of Primus preceded that of Caepio and Murena (Dio, 54.3.2-4), he would also have been tried in 23. This raises a particularly serious difficulty in the case of Primus, for it would mean that his Odrysian war was waged before the new constitutional settlement, which took effect when Augustus resigned the consulship on 1 July 23. If, therefore, the settlement of 27 B.C. was still in force, how could a charge of leaving his

^{53a} Cf. Volkmann, 56.1; Syme, 333; Hanslik, *Murena* 285; *RE* 22.2.1996; Sattler, 62 and n.151; Atkinson, 444; Rogers, *Treason* 92. Chilton (75) believes that there was an acquittal.

⁵⁴ *CIL* 1 (2).1.441 (as cited by Hanslik, *Murena* 283, and others.)

⁵⁵ Died in office. (tr.)

⁵⁶ For the references see Volkmann, 52; Hanslik, *Murena* 284; Atkinson, 462.

⁵⁷ Was condemned in office. (tr.)

⁵⁸ Volkmann, 52-3; Syme, 325.5; Siber, *Verfassung* 279.3.

province and making war *iniussu populi aut senatus* be met, in relation to the senatorial province of Macedonia, by the plea of *iussum Augusti aut Marcelli*? Augustus would clearly not have taken the trouble to appear and deny having given authority, unless his authority, if given, furnished a valid defence in law. And in 23 the 'Marcellus' in question would have been M. Claudius Marcellus, the nephew and son-in-law of Augustus (Syme, 378, 389; Atkinson, 441), which raises the question as to how his authority could have been an answer to the charge.

The correct approach has been found by Atkinson (443-52), who sets out to demonstrate that Dio's date is probably correct. Her argument is that, for the trial of Caepio and Murena, Dio (54.3) and Suetonius (*Aug.* 19.1; 56.3; *Tib.* 8.1) had a common source, which was well-informed on judicial matters, but was rather in the early period of Tiberius than contemporary:⁵⁹ the ultimate source, however, was the *acta publica*, which makes Dio's date probable. The fact that a number of jurors acquitted Primus, despite Augustus' testimony, means that there was something else to support them, namely the alternative plea of *iussum Marcelli*, the 'Marcellus' in question being M. Claudius Marcellus Aeserninus, consul in 22 B.C.⁶⁰ Primus left for his province in the spring of 23, fought the Odrysian war early in 22, and was tried in the latter part of that year. The authority of Augustus would not have been in writing, for in that case it could not have been denied.⁶¹ It was a verbal authority given before Primus left for his province. Early in 22 he received written instructions from the consul Marcellus. The position in regard to warfare by a governor was still, in terms of Sulla's *maiestas* law, that it

⁵⁹ Her suggestion (444.20) that the source was Venuleius Saturninus is untenable. Venuleius knew a rescript of Hadrian (*Dig.* 48.19.15) and his dates are probably even later, for his style is unclassical (Schulz, *Legal Science* 256).

⁶⁰ Atkinson, 444-5, 450. Hanslik (*Murena* 285), who also dates the trial to 22, holds that it was Marcellus the son-in-law, Primus having raised his authority because he was no longer alive to rebut it.

⁶¹ Atkinson, 441. But Sejanus did not hesitate to forestall the production by Cn. Piso of Tiberius' written instructions in regard to Germanicus (*Tac. Ann.* 3.16.1).

could not be conducted *iniussu populi aut senatus*.⁶² In the late Republic the Senate instructed a governor through one or both consuls, so that the orders to Primus could have been described as *iussu senatus ex auctoritate Marcelli*, corresponding to τῇ Μαρκέλλου γνώμῃ in Dio, 54.3.2. Primus' defence was therefore *iussum senatus*, conveyed verbally by Augustus in 23, and in writing by Marcellus in 22. The defence failed because Primus had misunderstood the scope of his orders. Sulla's law had included a prohibition against war on a client kingdom, which the Odrysae had been since the second triumphate. From 27 B.C. client kingdoms were *de facto* part of Augustus' *provincia*, and in 23 he gave Primus a general authority to protect Macedonia by operations in Thrace. Primus either misconceived the limits of his discretion (452; cf. Hanslik, *Murena* 285), or deliberately ignored them in order to secure a triumph.⁶³

Atkinson's hypothesis carries conviction up to the point where she shows that Augustus and Marcellus, as the premier consuls in their respective years, were the instruments for the conveyance of the Senate's instructions to Primus. In support of her reasoning it can be urged that Dio's date should not be rejected unless the alternative compels acceptance. When Dio says that in the consulship of Marcellus the accused pleaded the authority of Marcellus, it is sounder to accept this evidence at face value, rather than to make the unobvious assumption that he means the son-in-law Marcellus who died in 23 (Dio, 53.30.4). This assumption, apart from the inherent difficulty in explaining how this Marcellus had pre-eminent *auctoritas*,⁶⁴ seems to be invalidated by Dio himself (53.31.4) when he attributes Augustus' failure to make Marcellus his successor to the fact that οὐδέπω τῇ τοῦ μειρακίου γνώμῃ ἐθάρσει.⁶⁵ If Grant (84) rightly understands γνώμη as *auctoritas* in Dio,

⁶² Atkinson, 447. But her suggestion that *populi* had been deleted by Caesar, leaving the sole discretion with the Senate, gives a larger scope to Caesar's *maiestas* law than it is possible to accept (cf. pp. 157-60).

⁶³ Atkinson, 452. Hanslik (*Murena* 285; *RE* 22.2.1996) believes that Primus prejudiced Augustus' policy of maintaining the Odrysae as a bulwark against the North.

⁶⁴ A difficulty which is not adequately met by Grant (84).

⁶⁵ He did not yet have confidence in the youth's *auctoritas*. (tr.)

54.3.2, it should be given the same meaning in 53.31.4. If, therefore, Dio is at pains to say that Marcellus did not have the *auctoritas* required of Augustus' successor, he would surely have commented caustically on a claim by Primus that he acted on the authority of this Marcellus. Atkinson is inconsistent when she postulates a *de facto* control of client kingdoms by Augustus, for if *de facto* control means anything at all it would follow that the authority which Augustus gave Primus would not have derived from the Senate, and the consul Marcellus would have had nothing to do with it. Atkinson presumably evolves the client kingdom hypothesis in order to explain why Dio (54.3.2) does not attest Marcellus as also giving evidence, but on her own showing the reason was, in contradiction of her main hypothesis, that his evidence was irrelevant. It is preferable to suppose that, Augustus having given a clear indication of his wishes in regard to the outcome of the trial, Marcellus found it convenient to be elsewhere during the proceedings.

The problem of dating the trial of Caepio and Murena can be approached with the knowledge that the trial of Primus furnishes a strong probability in favour of 22. But if this date is to be retained something has to be done about the suggestion that the consul A. Terentius Varro Murena who died or was condemned in 23 was the conspirator who was tried with Caepio. It has to be shown either that the consul was not the conspirator, or that the consul neither died nor suffered condemnation in 23. Dessau (1.50.1; cf. Fluss, *RE* 5A. 709), doubting the identification of the consul with the conspirator, draws attention to the failure of Dio (54.3.4-5) and Velleius (2.91.2) to notice the unprecedented trial and execution of a consul in office. It can even be urged that Velleius' oversight is particularly significant, for he takes the trouble to comment on the conspirator's previous history: "sine hoc facinore potuit videri bonus";⁶⁶ something more specific might have been expected if the condemned man had been a consul.

The only clear piece of evidence about the consul, apart from the fact that something happened to him in his year of office, is that he was probably the Terentius Varro whom

⁶⁶ If not for this crime he would have been accounted a good man. (tr.)

Augustus sent against the Salassi in 25 (Syme, 325.5; Hanslik, *Murena* 282). The conspirator, perhaps as befits his trade, goes by several names. He was "Licinius Murena" if, as seems probable (cf. Hanslik, *Murena* 282; contra Atkinson, 460), the Λικίνιος Μουρήνας who defended Primus and was so free with his tongue (Dio, 54.3.3) is the Μουρήνας whose outspokenness involved him in the prosecution for *maiestas* (Dio, 54.3.4). Velleius' conspirator (2.91.2) is "L. Murena", while Suetonius' man (*Aug.* 19.1; *Tib.* 8.1) is "Varro Murena". Elsewhere he is simply "Murena" (Strabo, 14.670; Sen. *Clem.* 1.9.6) or "Varro" (Tac. *Ann.* 1.10.3). He was probably "Varro Licinius Murena", but his identification with the consul cannot be taken much further, although the case for identification is considerably advanced by the reading "magistratu motus est"⁶⁷ proposed by Hanslik (*Murena* 283-4); this, by assigning the removal from office to 23 and the trial to 22, avoids the awkward trial in office. Hanslik (*Murena* 282-3; 286-7) proceeds to identify A. Terentius Varro Murena with the "Licinius" of Horace *Carm.* 2.10 (contra Atkinson, 460). The argument is that "Licinius" was a man who, having fallen from high estate, was enjoined by Horace to abandon arrogance and ambition, and Licinius Murena the conspirator was generally unpopular because of his malicious tongue (Dio, 54.3.4). Hanslik contends that A. Terentius Varro (Licinius) Murena, as sole consul during Augustus' illness in the early part of 23, incurred such universal disfavour that he was removed from office. On that occasion Proculeius and Maecenas managed to avert further action, but his insolence to Augustus at the trial of Primus rankled, and there was a settlement of accounts with him when he became involved in the conspiracy of Caepio. A serious objection to this theory is Velleius' assertion that the conspirator was "bonus" apart from his crime (above), and it may be wiser to abandon the attempt to equate the consul and the conspirator. Atkinson (469-71) argues that as Athenaeus, the Greek from Cilicia, was tried with Murena, the latter was the Varro who was a legate in Syria in 25; therefore he is not the Terentius Varro who routed the Salassi in 25, and therefore not the consul of 23, but his cousin. But this theory is greatly

⁶⁷ He was removed from office. (tr.)

weakened by Atkinson's bald assumption (473) that Murena's offence was the use of troops without the authority of Augustus. This is not what Velleius (2.91.2) means by "cum iniissent occidendi Caesaris consilia".⁶⁸ Even Dio (54.3.4), who suggests that Murena was falsely charged with complicity because of his immoderate language, says that the allegation against him was συνομωμοκέναι.⁶⁹ Perhaps in the last resort Hanslik (*Murena* 298; cf. Kappelmacher, *RE* 6.2.1993) adduces the surest corroboration of Dio's date when he notices Velleius' observation (2.93.1) that the conspiracy of Caepio and Murena was approximately three years before the plot of Egnatius Rufus at the end of 19 B.C.^{69a}

The execution of Caepio and Murena (Dio, 54.3.5; Vell. 2.91.2) raises a problem. Mommsen (*Straf* 334.3; 936.2) assumes a sentence of interdiction, a breach of it—presumably by returning from exile—and a consequent execution. Volkmann (57), pointing out that Caepio was pursued immediately after his condemnation (Macrob. *Sat.* 1.11.21), and that the capture of Murena's friend Athenaeus in flight (Strabo, 14.5.4 p. 670) justifies a similar assumption for Murena himself, holds that Augustus seized them before they could reach a place of exile. The letter of the law was observed in the imposition of the statutory sentence of interdiction, but the possibility of actual execution always inherent in the outlawry of the accused in Rome and Italy was exploited by Augustus to 'reintroduce' the death sentence by the back door.⁷⁰ But this implies a curious sequence of events. Although the accused did not appear at the trial, it would have to be supposed that they remained in Rome, making no attempt to escape until they were condemned. As the period between a *nominis delatio* and a trial was at least 10, and possibly 30 days,⁷¹ it is

⁶⁸ After forming a conspiracy to kill the emperor. (tr.)

⁶⁹ That he had taken part in the conspiracy. (tr.)

^{69a} For fresh evidence in support of Dio's date see Bauman, *Historia* 15: 420ff., 1966.

⁷⁰ Cf. Fluss, *RE* 5A. 709. Chilton (75) holds that the executions were illegal, but he also seems to believe (76) that Caepio and Murena made good their escape into exile.

⁷¹ Mommsen, *Straf* 396-7. The longer period estimated by Atkinson (465-8) seems excessive.

not clear why they did not leave as soon as the *nominis delatio* was lodged, if their intention was not to appear in any event. Perhaps Murena was awaiting the outcome of the representations made to Augustus by Proculeius and Maecenas, and Caepio hoped to be included in any indemnity which might be granted. Augustus may have deliberately delayed his decision in order to keep them in Rome.

The principal source for the conspiracy of Egnatius Rufus in 19 B.C. is Velleius, who says that during his aedileship Egnatius won such favour by supplying his own fire brigade that he was elected praetor immediately after his aedileship (2.19.3; cf. Dio, 53.24.4-5). Thereafter he stood for the consulship, but the consul C. Sentius Saturninus would not allow him to seek election, saying that even if he were elected he would not return him (2.91.3; 92.4). Egnatius gathered others of his own kind—"adgregatis simillimis sibi"—and resolved to murder Augustus, and then to die himself (2.91.3). The plot was detected, Egnatius was imprisoned with his accomplices, and died as unworthily as he had lived (2.91.4). The only other pieces of evidence directly in point are supplied by Dio, who says that Egnatius' election as praetor made him so contemptuous of Augustus that he issued a proclamation to the effect that he had handed over the city to his successor undamaged and intact (53.24.5). Augustus took no action against him at the time, but afterwards he taught him not to set himself above his station (53.24.6).

McFayden (238) dates the case to 25 B.C., because of his acceptance of 26 as the year of Egnatius' aedileship (Dio, 53.24.4). Dio is not necessarily wrong as to the date of the aedileship,⁷² but the error is to assume that Egnatius canvassed for the consulship immediately after his praetorship. Dio (53.24.6) says only that Augustus soon taught him a lesson, and Velleius (2.91.3) observes that he subsequently ventured to stand for the consulship. It is clear that the trial of Egnatius was much later than 25. Seneca (*Clem.* 1.9.6) places Egnatius after Caepio, while Velleius (2.93.1) dates his crime to some three years after Murena and Caepio. The date when his

⁷² Despite Volkmann (52.4), Premerstein (113) and Groag (*RE* 5.2.1999). Syme (371) accepts Dio's date.

criminal attempt began can be fixed with precision in 19, for C. Sentius Saturninus, who as consul threatened to frustrate Egnatius' election (Vell. 2.92.4), held the consulship in 19 B.C. (Dio, 54.10.1). McFayden (238 and n.164) believes that Egnatius was tried by the *quaestio maiestatis*. If so, the back door which Augustus opened for Caepio and Murena (p. 189) must have swung off its hinges, for Egnatius seems to have been cast into the Tullianum and strangled immediately after his condemnation (Vell. 2.91.4), without even a pretence of allowing him to start his journey into exile. It is, however, by no means certain that Velleius implies a trial at all; "abditus carceri" (2.91.4), in regard to Egnatius, is a much less explicit indication of a trial than "oppressi auctoritate publica" in the immediately preceding account of Caepio and Murena (2.91.2).

Sentius was sole consul in 19, and the election of a colleague, to fill the vacancy which Augustus had refused, was attended by violence and murder (Dio, 54.10.1). This leads Volkmann (99) to the conclusion that the conspiracy of Egnatius took place during the pre-election rioting, and that he was executed under Sentius' consular *coercitio*, with the approval of Augustus. But this view cannot be right. During the electioneering disturbances Augustus was still absent from Rome (Dio, 54.10.2; Vell. 2.92.1), and Sentius was succeeded as consul by M. Vinucius before Augustus' return (Sattler, 87). There would not have been a plot to kill Augustus before it was known that he proposed returning, and his decision to do so was taken only when the Senate sent envoys to inform him of the disturbances (Dio, 54.10.2). As Augustus had a hand in the destruction of Egnatius (Dio, 53.24.6), the conspiracy must have been detected after his return to Rome, and therefore when Sentius was no longer consul. It therefore seems that the conspiracy was formed after the election troubles. Egnatius probably began his preparations to assassinate Augustus when the latter's decision to return became known. As Augustus entered Rome on 12 October, 19 B.C. (Groag, *RE* 5.2.2000), the execution of Egnatius, if it took place that year, cannot have been preceded by a trial in the *quaestio*, for a *nominis delatio* could not be lodged later in the year than 1 September (Atkinson, 466). If Volkmann's

hypothesis of an execution under consular *coercitio* is to be retained, it would have been carried out by the suffect consul M. Vinucius, or by Q. Lucretius Vespillo, whom Augustus had appointed as consul to fill the vacancy for which Egnatius had canvassed (Dio, 54.10.2), and not by Sentius.

It is not certain, however, that 19 B.C. was the year of Egnatius' death. In 18 B.C., after the *lectio senatus*, there were many accusations of plotting against Augustus and Agrippa, and Augustus ἄλλους μὲν τινὰς ἐδικαίωσε⁷³ (Dio, 54.15.1, 4). Dio seems to have had some trouble with his source at this point, for he inserts a short excursus as to the difficulty of obtaining accurate knowledge of treason trials, and the method by which he proposes to meet it (54.15.2-3). This difficulty appears in the anonymity of ἄλλους τινὰς, the only name which he managed to find being that of Lepidus (the former triumvir) who, in contrast to the unnamed victims, was not prosecuted. The mention of Lepidus in the same sentence as the victims suggests, however, that Lepidus was implicated in the plot.⁷⁴ It is not without significance that Seneca (*Brev. Vit.* 4.5) has the sequence: "Murenæ, Caepiones, Lepidi, Egnati . . . in eum mucrones acuebantur."⁷⁵ It is also noteworthy that Dio, having anticipated Egnatius' fate when discussing his aedileship (53.24.6), makes no reference to it among the events of 19 B.C. (54.10). His closest approach to a return to the subject is the condemnation of ἄλλους τινὰς in 18 B.C. The conspiracy provoked by the *lectio senatus* would have been of some magnitude. Yet if the case of Egnatius has no connection with it, 'the rogues' galleries' (Suet. *Aug.* 19.1; Sen. *Clem.* 1.9.6; *Brev. Vit.* 4.5) and Velleius have overlooked a major plot. The conspiracy of Egnatius undoubtedly started in 19 B.C., and probably with the support of the anti-Augustan faction in the Senate. Egnatius, smarting under the rebuff administered by Sentius, and embittered because of the

⁷³ Punished a few men. (tr.)

⁷⁴ Although Lepidus was not excluded from the Senate, Augustus lost no opportunity of humiliating him (Dio, 54.15.5-6), and threatened to punish the jurisconsult Antistius Labeo for having included Lepidus among those to be elected (Dio, 54.15.7).

⁷⁵ Murena, Caepio, Lepidus and Egnatius sharpened their daggers against him (tr.)

appointment of Vespillo to the post which he had coveted, was financially ruined by his election campaign (Vell. 2.91.3), and was a ready tool for the Republican faction. The strength of the conspiracy which he mounted can be gauged from the fact that when Augustus returned to Rome in 19 B.C. he went in such fear of assassination that he wore a thorax even in the Senate (Dio, 54.12.3; Suet. *Aug.* 35). It was not possible to suppress the conspiracy until 18 B.C. when, with the *lectio senatus* behind him, Augustus was able to deal with Egnatius and his associates. As far as the time factor is concerned, therefore, there would have been no obstacle to a regular trial in the *quaestio maiestatis*.

The conspiracy of Cornelius Cinna raises an acute chronological problem. The facts are that a plot was disclosed to Augustus, who summoned a *consilium amicorum*. Augustus, being uncertain what to do with Cinna, consulted Livia, who tendered him some advice. Augustus dismissed his *consilium*, addressed a long homily to Cinna, and let him go. Subsequently Cinna reached the consulship, and there were no further plots against Augustus (Dio, 55.14-22, Sen. *Clem.* 1.9.2-12). Except for the fact that Dio does not mention the *consilium*, the accounts of Seneca and Dio are so close that a common source seems probable.⁷⁶ For example, they correspond even in attributing the identical simile of the physician to Livia (Dio, 55.17.1; Sen. *Clem.* 1.9.6). It is therefore difficult to understand the glaring discrepancy between their dates. Dio dates the conspiracy to A.D. 4, while Seneca (*Clem.* 1.9.2) says that it was "cum (sc. Augustus) annum quadragensimum transisset et in Gallia moraretur".⁷⁷ The authorities consulted,⁷⁸ presumably because Augustus was in Gaul from 16 to 13 B.C. (Dio, 54.19-25), take Seneca to imply a date in that period. This discrepancy is bad enough, but there is also an internal inconsistency in Seneca. As Augustus was born on 23 September, 63 (Speyer, 278) he reached his fortieth year in 23, and would therefore have been in his late forties, and not merely 'past his fortieth

⁷⁶ Cf. Groag, *RE* 4.1288. Speyer (277, 280) believes that Seneca was the original source, and that Dio referred directly to him.

⁷⁷ When Augustus was past his fortieth year and was tarrying in Gaul. (tr.)

⁷⁸ Groag, *RE* 4.1288: Volkmann, 84; Syme, 414.1; Speyer, 278; Kelly, 42. McFayden (240) does not assign a date.

year', during his sojourn in Gaul. The other serious difference concerns the name of the conspirator, whom Dio (55.14.1) knows as Cn. Cornelius, a son of Pompey's daughter. Seneca's man (*Clem.* 1.9.2, 6) is L. Cinna, also a grandson of Pompey (*Clem.* 1.9.3).

As Seneca (*Clem.* 1.9.6) places Egnatius before Cinna in his catalogue of conspirators, Cinna's plot would seem to have been not earlier than 18 B.C. Therefore, of the known sojourns of Augustus in Gaul,⁷⁹ the only possibilities would be 16-13 B.C., 10 B.C., and 8 B.C. But the consular *fasti* do not attest a Cornelius Cinna as consul in any appropriate year following these sojourns. Dio's date has the merit of being immediately followed, in A.D. 5., by the consulship of Cn. Cornelius Cinna Magnus, who is said to be the conspirator.⁸⁰ The argument would be that L. Cornelius Cinna, praetor in 44 B.C. and an adherent of the anti-Caesarian party, was the husband of Pompey's daughter, Pompeia, and had two sons—Cn. Cornelius Cinna Magnus by Pompeia, and L. Cornelius Cinna by an earlier wife. One of them must be 'Cinna'. The elder son, L. Cinna, was appointed suffect consul by Octavian in 32 B.C. and, the argument would proceed, he would therefore not have been the conspirator. But Magnus is said to have fought with Antony—and indeed to have remained with him to the end—and would therefore qualify, in so far as the conspirator was twice pardoned by Augustus: "Vitam, inquit, tibi Cinna iterum do, prius hosti nunc insidiatori ac parricidae".⁸¹ There are, however, several objections to Magnus. The more serious is that Seneca's conspirator was "adulescens" (*Clem.* 1.9.3, 5), an epithet which may have been applicable in 16-13 B.C., and possibly even in 10 B.C., to a man who had fought with Antony, but which was impossible of application in A.D. 4 (cf. Fitzler-Seeck, *RE* 10. 370). Secondly, no sojourn of Augustus in Gaul is known for A.D. 4. Furthermore, there is no advantage in seeking to date the conspiracy to A.D. 4, merely in

⁷⁹ 27 B.C.; 25-4 B.C.; 16-13 B.C.; 10 B.C. (Fitzler-Seeck, *RE* 10.370), to which Speyer (278) adds 8 B.C.

⁸⁰ Groag, *RE* 4.1288: Syme, 414.1; Speyer, 280.

⁸¹ He said: I have twice spared your life, Cinna; once as an enemy and now as an insidious assassin. (tr.) Sen. *Clem.* 1.9.11. Cf. Groag, *RE* 4.1282ff.; Syme, 269 and n., 279 and n.3.

order to reconcile its date with the assertions of Seneca (*Clem.* 1.9.12) and Dio (55.22.2) that it was the last conspiracy against Augustus, for there was a substantial conspiracy in A.D. 6 (p. 260).

Fitzler-Seeck (*RE* 10. 370-1) find the inconsistencies irreconcilable. They point out that Cinna's conspiracy is not mentioned by Velleius, Livy, or Suetonius (cf. Speyer, 280-1), and that Seneca's other reference to Cinna (*Ben.* 4.30.2) does not notice the conspiracy. They therefore doubt the historicity of the entire episode, and regard it as an invention of Seneca for the instruction of Nero. But Seneca (*Clem.* 1.9.11) seems to have seen a verbatim account of Augustus' homily to Cinna: "ne totam eius orationem repetendo magnam partem voluminis occupem (diutius enim quam duabus horis locutum esse constat)".⁸² And it would surely not have been wise to level a false accusation of *maiestas* at a recent historical personage. Men still living would have remembered the consul of A.D. 5, or would have heard from their fathers of the conspirator of 16-13 B.C.

The correct approach may be to assume that Cn. Cornelius Cinna Magnus was too young to serve under Antony against Octavian. His mother Pompeia cannot have married his father, L. Cornelius Cinna, before late 46 or early 45 B.C., for during the second intercalary month of 46 B.C. she was commended to Cicero as a wife in place of Terentia (Miltner, *RE* 21.2264). Magnus would therefore not have been born before late 45 or early 44 B.C., which would have made him some twelve or thirteen years old when war broke out between Octavian and Antony. It is therefore suggested that Seneca's L. Cinna was the elder half-brother L. Cornelius Cinna (jun.), who was consul *suffectus* in 32 B.C. Seneca (*Clem.* 1.9.8; cf. *Ben.* 4.30.2) reports Augustus as saying that he had found Cinna in the enemy camp, and had allowed him to retain his father's property. Not only was L. Cinna the only brother qualified by age to be with Antony, but it is also more reasonable to suppose that the elder brother was the one who claimed the property and was allowed to keep it. Furthermore, it is clear

⁸² In order not to take up most of this book with a repetition of his speech (it is well known that he spoke for more than two hours). (tr.)

from Seneca (*Ben.* 4.30.2) that there was an appointment as consul soon after Cinna was found in the enemy camp: "Cinnam nuper quae res ad consulatum recepit ex hostium castris?" This seems to mean the suffect consulship of L. Cinna in 32 B.C. And Seneca's assertion, at the end of his account of the conspiracy (*Clem.* 1.9.12), that the conspirator achieved the consulship, is so worded as to suggest a suffect rather than an eponymous consul: "Post hoc detulit ultro consulatum questus quod non auderet petere." Magnus, however, was consul *ordinarius* in A.D. 5.

L. Cornelius Cinna (sen.) had a record as an anti-Caesarian (Münzer, *RE* 4.1287-8), and it may be supposed that his elder son was an opponent of Octavian quite independently of the Pompeian connection which his father contracted. He may have been a supporter of Antony in the confused situation prevailing in 32 B.C. When the consuls Cn. Domitius and C. Sosius fled to Antony (Dio, 50.2.6), others in turn went over from Antony to Octavian (Dio, 50.3.1), and L. Cinna may well have been one of them. His reward was the suffect consulship and the release of his father's property.

It is suggested that the incorrect date and the wrong person are those attested by Dio. If Seneca was Dio's source, the latter's difficulties are obvious. Seneca, in order to give Nero a striking precedent, distorted the sequence of events so as to achieve the climax of a pardon and a consulship. But his distortion was only partial, for his language lets it appear that the conspirator had been only consul *suffectus*. Dio, not noticing this, took the consulship at face value, and therefore searched for a Cinna who had been consul *ordinarius*. Finding only Magnus in A.D. 5, he assumed that he was the conspirator and dated the conspiracy to A.D. 4. It is also worthy of note that Dio says very little about the conspirator himself. In the whole of his long narrative (55.14.1-22.2) his sole references to Cinna are that he was the son of Pompey's daughter (55.14.1), that he was of good birth and notable (55.21.1), and that he became consul (55.22.1). Dio was not happy with Seneca's account, as he understood it, and jettisoned accuracy, leaving it to rhetoric to bolster up his version.

It remains, however, to explain why Seneca dates the conspiracy to Augustus's 41st year,⁸³ at a time when he was in

Gaul. It is possible that there was a sojourn in Gaul in 22 B.C. In that year Augustus restored Gallia Narbonensis to the Senate's jurisdiction (Dio, 54.4.1), and this event, which Dio reports immediately after the conspiracy of Caepio and Murena, may have been given considerable publicity, in order to counteract the odium which Augustus had incurred when he authorized a thanksgiving for the suppression of the conspiracy of Caepio and Murena (Dio, 54.3.8). If it is supposed that Augustus went to Gaul in order to publicize the handing over, the inconsistency in Seneca is resolved, for Augustus was in his 41st year in 22 B.C. The Gallic sojourn of 16-13 B.C., apart from not being in his 41st year, is open to another criticism. The debate between Augustus and Livia (Dio, 55.14.2-21.4; Sen. *Clem.* 1.9.6) would not have been conducted by correspondence, despite Suetonius' assertion (*Aug.* 84) that Augustus habitually communicated with Livia in writing on important matters. But Livia would not have been with Augustus in Gaul in 16-13 B.C., for Dio (54.19.3) suggests that the real reason which then took Augustus to Gaul was the desire to live with Terentia.

⁸³ Speyer (278, 281-2) maintains that Seneca *Clem.* 1.9.2 should not be taken literally, and suggests that he means merely that Augustus was past his prime. On the argument here put up, however, Seneca can be taken to mean what he says.

“Sua Domusque Suae Maiestas”

A. THE CASE OF THE EMPEROR'S DAUGHTER

In 2 B.C. Augustus, who had previously suspected the morals of his daughter Julia, but had not had sufficient information to convert suspicion into belief, learnt of her dissolute life and communicated the matter to the Senate, as a result of which Julia was relegated to the island of Pandateria; of her paramours some prominent persons, including Antony's son Iullus Antonius, were put to death, and the rest were relegated to islands (Dio, 55.10.12-15). Velleius (2.100.3-5) says that Antonius committed suicide, and that Quintus Crispinus, Appius Claudius, Sempronius Gracchus, Scipio, and others of less note were punished under Augustus' adultery law. One of Velleius' "alii minoris nominis" (2.100.5) seems to have been a certain Demosthenes (Macrob. *Sat.* 1.11.17). Seneca (*Ben.* 6.32.1-2), apparently citing the indictment against Julia (Syme, 426.7), attests droves of adulterers, nocturnal debauches in the Forum, and common prostitution: "Divus Augustus . . . flagitia principalis domus in publicum emisit: admissos gregatim adulteros, pererratam nocturnis comissionibus civitatem, forum ipsum ac rostra, ex quibus pater legem de adulteriis tulerat, filiae in stupra placuisse, cotidianum ad Marsyam concursus, cum ex adultera in quaestuariam versa ius omnis licentiae sub ignoto adultero peteret."¹

¹ The emperor Augustus disclosed the misdeeds of his house: his daughter had received paramours in droves; she had traversed Rome in nightly revels; she had used the very Forum for her pleasures, and even the dais where her father had proposed his adultery law; turning from adultery to prostitution, she had regularly patrolled the statue of Marsyas, seeking all kinds of delight in the arms of casual lovers. (tr.)

The detection of the scandal induced an uncontrollable rage in Augustus.² His communication to the Senate was made in his absence in a letter read by his quaestor (Suet. *Aug.* 65), and is probably the letter referred to by Pliny (*N.H.* 21.9). As Pliny there mentions Julia's habitual presence at the statue of Marsyas, and as Seneca (*Ben.* 6.32.1) attests this as one of the charges, the letter may have been in the form of an indictment. Suetonius (*Aug.* 65) says that after sending the letter Augustus avoided men's society, which may mean that he left Rome for a while (Fitzler, *RE* 10.902). He commended Phoebe, Julia's freedwoman and accomplice, for having committed suicide, prescribed harsh treatment for Julia on Pandateria and rejected all requests that she be allowed to return, but transferred her after five years to Rhegium on the mainland, where she died in A.D. 14.^{2a} Julia was treated as no longer belonging to Augustus' family, did not benefit under his will, and was not allowed interment in his mausoleum (Fitzler, *RE* 10.903).

If this were all, the case might not warrant consideration in a study of *maiestas*. But several passages in the sources suggest that the matter went further than mere adultery. Dio (55.10.15) says that Antonius' adultery was alleged to be linked to designs on the Principate: ὥς καὶ ἐπὶ τῇ μοναρχίᾳ τοῦτο πράξας. Pliny (*N.H.* 7.45.149) speaks of the adultery of Julia and an open conspiracy to kill Augustus. Tacitus (*Ann.* 3. 24.2-3) says that Augustus acted illegally: "Ut valida divo Augusto in rem publicam fortuna, ita domi inprospera fuit ob inpudicitiam filiae ac neptis, quas urbe depulit adulterosque earum morte aut fuga punivit. nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur".³ Even Velleius (2.100.5) finds it a matter for comment that Crispinus, Claudius, Gracchus and Scipio received the same punishment for violating the daughter of Augustus and the wife of Tiberius as they would have received for violating the wife of an ordinary citizen. On the other hand,

² Dio, 55.10.12, 14; Seneca, *Ben.* 6.32.2—who says that Augustus afterwards regretted his impulsive disclosure; Suet. *Aug.* 65.

^{2a} Dio 55.10.16, 13.1; 56.32.4; Suet. *Aug.* 65, *Tib.* 11; Tac. *Ann.* 1.53.1.

adultery alone is discussed in some passages (Sen. *Ben.* 6.32.1-2; *Clem.* 1.10.3; Macrobian *Sat.* 1.11.17), while Seneca (*Clem.* 1.10.3) stresses Augustus' clemency: "Quoscumque ob adulterium filiae suae damnaverat, adeo non occidit ut, dimissis quod tutiores essent, diplomata daret".⁴

Syme (426-7) believes that Julia's misconduct was used as a pretext for political reasons. Augustus was prepared to sacrifice her, for by cutting the link with Tiberius he might secure the succession of Gaius and Lucius. Alternatively, there was a conspiracy;⁵ although Gracchus is the official scapegoat, the ringleader was probably Antonius, who may have aspired to supplant Tiberius as the stepfather of Gaius and Lucius. This view is open to several objections. Despite Seneca's apt "*filia et tot nobiles iuvenes adulterio velut sacramento adacti*",⁶ it was a strange conspiracy which restricted admission to those who had attended a qualifying course *apud Iuliam*. Pliny's "*consilia parricidae*" is not corroborated by other sources. Velleius, who is generally not slow to detect *scelesta consilia*, makes no such suggestion in his fairly full notice of Antonius, saying only that he was "*violator eius domus*"⁷ (2.100.4; cf. Tac. *Ann.* 3.18.1). Seneca does not mention the paramours in his account of Julia's disgrace (*Ben.* 6.32.1-2). Elsewhere (*Clem.* 1.10.3) he says that they were convicted of adultery with Julia, in a passage immediately following his assertion that L. Cinna's conspiracy was the last

* The emperor Augustus was fortunate in public affairs but unfortunate in private because of the shamelessness of his daughter and grand-daughter. He expelled them from Rome and sentenced their paramours to death or exile. In so doing he gave the weighty name of "a breach of religious duty and a violation of majesty" to a common peccadillo of men and women, thus disregarding the clemency of our ancestors and going beyond the scope of his own laws. (tr.)

* He did not execute those whom he had condemned for adultery with his daughter, but gave them travel-documents and sent them away for their own safety. (tr.)

* Cf. Groag, *RE* 2A.1373; Dessau, 1.466-7; Groebe, *RE* 1.2584.

* His daughter and a number of young nobles were pledged to adultery as if bound by a military oath. (tr.) *Brev. Vit.* 4.5. No less neat is Groag's observation (*RE* 2A. 1371) that the dependence of the nobility on one man meant "*dass sie ihre Kräfte statt im Kampf der Parteien im Kampf um die Weiber verbrauchten*".

* The violator of his house. (tr.)

against Augustus. Suetonius (*Aug.* 19.1) omits Antonius and the other adulterers from his list of conspirators, although in the same chapter (19.2) he notices the plot of Audasius and Epicadus to rescue Julia from exile. Dio (55.10.15) says that the adulterers included a tribune who was not punished until after his year of office;⁸ if this tribune had been a conspirator he would not necessarily have received the same scrupulous treatment, for Augustus had enough precedent for the removal of a conspirator from office for the purpose of a prosecution (pp. 173, 188). Furthermore, there is no evidence of the customary *senatusconsultum* decreeing a thanksgiving when a conspiracy had been suppressed. Finally, the name of Antonius, who was consul in 10 B.C. (Groebe, *RE* 1.2584), was not expunged from the *fasti* (Tac. *Ann.* 3.18.1). If the crime to which Augustus reacted so violently had been a conspiracy he would surely not have stopped short of a *memoriae damnatio*.

The crucial passage is Tacitus (*Ann.* 3.24.2-3; p. 199). Tacitus says, firstly, that Augustus was fortunate in public affairs, but unfortunate in his domestic affairs because of Julia's conduct; this contrast seems to suggest that there was no conspiracy, for if there had been Augustus would not have been 'fortunate in public affairs'. Secondly, Augustus relegated Julia and punished the adulterers with death or exile. Thirdly, when he imposed these punishments Augustus gave the names of impiety and *maiestas* to the common crime of adultery, and thereby departed from traditional clemency and exceeded the ambit of *suas leges*. Which law was it whose limits he exceeded, the *lex Julia de adulteriis coercendis*, or the *lex maiestatis*, or both? If it is held that it was the adultery law,⁹ then Tacitus

⁸ As Sempronius Gracchus was exiled a year later than Julia (Tac. *Ann.* 1.53.6), it has been suggested (Furneaux, 1.250.4) that he was the tribune. Groag (*RE* 2A.1373) objects that the Sempronii Gracchi of the Principate were patricians. But Tacitus (*Ann.* 1.53.8) notices Gracchus' relationship to the great tribunes of the second century B.C. Perhaps the most likely tribune in 2 B.C. was the paramour Scipio if, as Groag (*RE* 4.1427) believes, he was the son of P. Scipio, consul in 16 B.C. This would make him appreciably younger than the others, of whom Crispinus was consul in 9 B.C. (Groag, *RE* 4.1719), and Appius Claudius was a senator in 25 B.C. (Münzer, *RE* 3.2668).

⁹ Furneaux, 1.419.16; Syme, 426; Mommsen, *Straf* 587.1; Hartmann, *RE* 1.434; Fitzler, *RE* 10.902.

means that the charge was brought under the *lex*, but a sentence not lawfully imposable for adultery was secured by introducing allegations of *maiestas*;¹⁰ on this view Tacitus' criticism goes to the legality of the sentence. If it was the *lex maiestatis*,¹¹ Tacitus' point is that there was an unlawful extension of the substantive law, in that an offence which should have been charged *lege Julia de adulteriis* was prosecuted *lege maiestatis*.

Much of the evidence suggests that the prosecutions were based on the adultery law. By sending Julia a repudiation in the name of Tiberius (Suet. *Tib.* 11) Augustus fulfilled a condition precedent to a prosecution for adultery, which could not be brought against either the woman or the paramour until the marriage had been dissolved.¹² The prescribed penalty for adultery was *relegatio in insulam*, accompanied in the case of the woman by forfeiture of half the *dos* and confiscation of a third of her property, and in the case of the adulterer by confiscation of half his property.¹³ Relegation was precisely the sentence imposed on Julia,¹⁴ and forfeiture of half her *dos* also seems to have followed, for the waiver which Tiberius voluntarily made (Suet. *Tib.* 11.4) probably related to that part of the penalty: "officii duxit . . . utcumque meritae, quidquid umquam dono dedisset, concedere."¹⁵ The adulterers, apart from Antonius, were also relegated (Vell. 2.100.5), and Seneca (*Clem.* 1.10.3) suggests that Augustus assisted them to go into voluntary exile. Dio (55.10.5) says that certain other

¹⁰ It may be felt that the aggravation of punishment, on a prosecution for crime X, by leading evidence that the accused also committed crime Y, was possible on the analogy of the position postulated by Henderson in the case of extortion (pp. 86-7). But Henderson's thesis is not acceptable, and in any event it will be suggested that Tacitus' probable meaning is quite different.

¹¹ Dessau, 1.467; Kelly, 36-7; Chilton, 75; Rogers, *Trials* 27; Ciaceri, 266 and n.3.

¹² *Dig.* 48.5.12.10; cf. Mommsen, *Straf* 697 and n.3; Hartmann, *RE* 1.433.

¹³ Paul. *Sent.* 2.26.14; cf. Mommsen, *Straf* 698; Hartmann, *RE* 1.434; Fitzler, *RE* 10.902.

¹⁴ It is not clear why Dessau (1.466) and Syme (426) hold that Julia's punishment went beyond the *lex*. See Fitzler, *RE* 10.902.

¹⁵ He considered it his duty, regardless of what she deserved, to allow her to keep whatever gifts he had given her at any time. (tr.)

notables died with Antonius, but Velleius is emphatic, Dio names only Antonius, and Sempronius Gracchus is known to have survived until A.D. 14 (Tac. *Ann.* 1.53.5-9). The procedure which was followed is not very clear. Some authorities believe that Julia was punished by Augustus in his domestic tribunal, outside the ambit of the public criminal law,¹⁶ and that the same tribunal dealt with the paramours,¹⁷ but it is not certain that this view is correct. There would be no point in Tacitus' "suas leges egrediebatur"¹⁸ if Augustus had not purported to act under the laws at all. Fitzler (*RE* 10.902) points to the absence of evidence of any legal proceedings against Julia, and to the desire of Augustus, in his first flush of rage, to execute her summarily.¹⁹ Fitzler argues that although the letter to the Senate must have been written after an inquiry conducted by Augustus, no source places the letter after her condemnation. On the contrary, Dio (55.10.4) says that she was relegated as a result of the communication to the Senate. It is suggested that a similar inference can be drawn from Suetonius (*Aug.* 65), whose sequence is: the letter to the Senate; the withdrawal from men's society; the impulse to execute her; and the relegation. A condemnation is attested by Suetonius, in language which does not suggest a domestic tribunal: "ob libidines atque adulteria damnatam"²⁰ (*Tib.* 11.4; cf. Sen. *Clem.* 1.10.3). Dio (55.10.16), immediately after discussing the cases of Julia and the paramours, says that as a result many other women were accused of similar conduct, but Augustus οὐ πάσας τὰς δίκας ἐδέξατο.²¹ Kelly (35-36) considers that the proceedings contemplated here were in the *quaestio de adulteriis*, as ἐδέξατο means not 'accepted' but 'approved'; and indeed

¹⁶ That is, the "Hausgericht" or domestic tribunal proper, as opposed to the "Kaisergericht" or imperial court of public criminal jurisdiction. Mommsen, *Straf* 587.1; 974.2; Lengle, *Straf* 75; Dessau, 1.416; Volkmann, 81; Kelly, 7, 10-1, 35; Ciaceri, 266.

¹⁷ Volkmann, 121; Kelly, 10-1—although elsewhere (36-7) he says it was the imperial criminal court.

¹⁸ He went beyond the scope of his own laws. (tr.)

¹⁹ Suet. *Aug.* 65. Augustus could not do this under his own adultery law, as the adultery had not been discovered in his own house (cf. *Dig.* 48.5.24 (23)).

²⁰ She was condemned for her lusts and adulteries. (tr.)

²¹ Did not approve of all the charges. (tr.)

it does not seem that Augustus would have been prepared to try a whole batch of cases himself.

It is postulated that Augustus did not breach the adultery law as far as the penalty was concerned, but that there was a possible breach of a different kind. Dio (55.10.16) says that Augustus laid down a period of prescription for adultery prosecutions, and allowed all the other women to benefit by it, but not Julia. There was a prescriptive period of five years for all forms of the crime (*Dig.* 48.5.30.5-7), and this rule was clearly a term of the *lex Julia de adulteriis*: "hoc quinquennium observari legislator voluit" (*Dig.* 48.5.30.6). Dio therefore errs in dating the prescriptive rule to 2 B.C., as the adultery law was passed in 18 B.C. (Mommson, *Straf* 691) or 17 B.C. (Hartmann, *RE* 1.433). A shorter period of prescription also seems to be attested (*Dig.* 48.5.30.5), whereby action against the woman had to be instituted within six months of divorce, but this rule was laid down in a post-Augustan rescript (*Dig.* 48.5.30.5). The question is whether the paramours committed adultery with Julia at approximately the same time, namely in or about 2 B.C., or at different periods. At least one adulterer began his relationship with her well outside the five years' prescriptive period. Sempronius Gracchus, the "pervicax adulter", first corrupted her when she was the wife of Agrippa (who died in 12 B.C.), and continued the association after her marriage to Tiberius, inciting her against Tiberius and composing a letter attacking him, which Julia sent to Augustus (*Tac. Ann.* 1.53.5); Gracchus may have been the father of Agrippa Postumus, who was born after Agrippa's death (Hanslik, *RE Supp.* 9A.1.1268). Despite Syme's assertion (427) that Gracchus was only a scapegoat for Antonius, there is no evidence that any other paramour had an association with Julia in any way comparable, in point of duration or intensity, to that of Gracchus. It is difficult to accept Groag's suggestion (*RE* 2A.1373) that Gracchus participated in a movement to marry Antonius to Julia; any possible advantage to Gracchus would surely have been outweighed by the ignominy of being supplanted in her affections. If anyone had aspirations ἐπὶ τῇ μοναρχίᾳ, why was it not the entrenched Gracchus rather than the newcomer Antonius? The answer may be that Gracchus had fallen out of favour with Julia prior to the events of 2 B.C.,

and perhaps long enough before to justify the supposition that his adultery with her was more than five years old when he was prosecuted. This view finds some support in Tacitus' statement (*Ann.* 1.53.6) that Gracchus was relegated—"igitur amotus"—because of his actions referred to in *Annales* 1.53.5, the last of which was the letter attacking Tiberius. This would have been before Tiberius' secession in 6 B.C., and may have been some time before. If, therefore, Gracchus' crime was prescribed in 2 B.C., his prosecution is rightly described as exceeding "suas leges", as far as the adultery law is concerned. But *maiestas*, which never became prescribed (Mommsen, *Straf* 698), furnished a way around the difficulty.

The charge against Iullus Antonius was undoubtedly some form of *maiestas*. The evidence that he was executed is not conclusive, but the decisive fact is that he died, whether by execution or suicide. Kelly (36) believes that ἀπέθανε in Dio 55.10.15 is used in a passive sense, and this may well be Dio's meaning, for when he cites a clear case of suicide in the same chapter (55.10.16), namely that of Phoebe, he uses the expression προαπέθανεν ἑκουσία. Tacitus' "morte . . . punivit" (*Ann.* 3.24.2) may well mean actual execution,²² but this does not necessarily mean the legal imposition of the death penalty. The 're-introduction' of the death sentence against Caepio and Murena (p. 189) had taken the form of a sentence of interdiction, but actual execution, and the same doctrine of 'quick pursuit' may have been invoked against Antonius. It is suggested that this doctrine was limited to *maiestas*, so that if this was the manner of Antonius' death it is evidence of the nature of the charge against him. A similar conclusion is reached if Velleius' version of suicide (2.100.4) is accepted. The introduction of an allegation of *maiestas* would have reminded Antonius of the fate of Caepio and Murena. Faced with the prospect of a sentence of interdiction followed by an ignominious death, he chose suicide.²³ There is another piece

²² Rogers, *Treason* 92. Cf. "interfectos . . . Iullos" (*Ann.* 1.10.3) and "Iullo Antonio . . . morte punito" (*Ann.* 4.44.5).

²³ It should not be assumed that his motive was to avoid confiscation of his property. Chilton's view (79-81) that this motive actuated suicides in *maiestas* cases does not outweigh the counter-arguments of Ciaceri, 267-9; Rogers, *Trials* 183-4; and Volterra, 486.

of evidence to suggest that the charge was *maiestas*. L. Antonius, the son of Iullus Antonius, was exiled by Augustus after his father's death, and while still an *adulescentulus* who had not yet completed his studies (Tac. *Ann.* 4.44.5). He is nowhere mentioned as a paramour, and seems to have been too young to have got into political trouble on his own account. His crime may well have been that of mourning his father, in breach of the rule which prohibited mourning for those convicted of *maiestas*.²⁴

It may be objected that if Gracchus and the rest were also charged with *maiestas* they should also have been pursued and executed, or driven to suicide in anticipation, instead of being allowed to go quietly into exile. The answer seems to be that there was an aspect of Antonius' conduct which aggravated his offence, and either prompted Augustus to pursue and execute him, or left him in no doubt that this would follow his condemnation. In order to take this question further it is necessary to consider the precise nature of the crime of Julia and her paramours, and to determine the relationship between the crime of "laesarum religionum ac violatae maiestatis"²⁵ (Tac. *Ann.* 3.24.3) and the *crimen maiestatis populi Romani imminutae*.

B. "GRAVI NOMINE LAESARUM RELIGIONUM AC VIOLATAE MAIESTATIS APPELLANDO"

The conspiracies against Augustus which have been discussed (pp. 173-197) do not require the assumption of a *maiestas* shift from the Roman People to Augustus in order to put them in their proper legal perspective. Whether as triumvir or as *princeps*, Augustus himself at all times fell under the category "quis magistratus populi Romani quive imperium potestatemve habet"²⁶ (*Dig.* 48.4.1.1), so that all plots against him, at least until 2 B.C., are within the framework of acts which diminished

²⁴ *Dig.* 3.2.11.3; cf. Tacitus, *Ann.* 6.10.1: "necataque est anus Vitia, Fufi Gemini mater, quod filii necem flevisset".

²⁵ Breaching religious duty and violating majesty. (tr.)

²⁶ A magistrate of the Roman People or the holder of *imperium* or *potestas*. (tr.)

maiestas populi Romani. That no extraordinary principle had to be invoked for these attacks is shown by the fact that the plots attending the *lectio senatus* in 18 B.C. were punished as having been directed against both Augustus and Agrippa (Dio, 54.15.1, 4), so that this is clearly a case where they were injured in a magisterial capacity. The punishment of adultery with Julia as *maiestas* cannot, however, be justified on any of the principles which have so far been considered. It may at a pinch be argued that any disgraceful conduct by a magistrate or senator could, without offending against Republican usage, be prosecuted as *maiestas* (cf. pp. 87-88), but this rule would not have applied to at least one of the friends of Julia, namely a certain Demosthenes (p. 198). Adultery could in general terms be regarded as an *iniuria* to the woman's father, but it was precisely for this reason that he shared a preferential right of prosecution with the husband.^{26a} To call adultery *maiestas* meant that an *iniuria* to Augustus, as a father, and not as the holder of *imperium* and *potestas*, was converted into a crime against the State. Caesar's *ego et populus Romanus* at the very least admitted the State as a junior partner, but how did the *populus Romanus* fit into *ego et domus mea*?

Pollack, correctly pointing out that *populus Romanus*, meaning the State, was a juristic person,²⁷ says of Augustus (128): "Denn steht eine Person im Vordergrund des politischen und staatlichen Lebens, eine Person, die den Staat verkörpert, repräsentiert" (cf. Syme, 519; De Francisci, 73). Arangio-Ruiz (137) maintains that if "*iniussu principis*" in *Digest* 48.4.3 (cf. pp. 271-9) can be referred to Augustus, it would mean that he was a corporation sole²⁸—which amounts to saying that a technical *maiestas* shift to Augustus would have meant the replacement of one juristic person (the *populus Romanus*) by another (the *princeps*). Evidence of such a transformation should first be sought in the constitutional position of Augustus. It will therefore be convenient to begin with a brief search for a possible connection between *imperium*

^{26a} Mommsen, *Straf* 695, 697, 798f.; Hartmann *RE* 1.433.

²⁷ Pollack, 127; cf. Mommsen, *Staat* 3.1.3-4; Greenidge, *Public Life* 34; Buckland, 35; Siber, *Verfassung* 10.

²⁸ Contra Buckland, 35: "There is nothing corporate about the Emperor—he is a man."

and a *maiestas* shift, and then to consider the extra-constitutional question of *auctoritas*. Thereafter it is proposed to analyse what are believed to be the crucial factors.

Whether the (probably) *proconsular imperium*²⁹ on which Augustus based his provincial administration was effective over the governors of senatorial provinces in terms of the original settlement of 27 B.C.,³⁰ or whether the *maius imperium* should be assigned to the settlement of 23 B.C.,³¹ this power does not seem to furnish evidence of a *maiestas* shift. Mommsen (*Staat* 2.2.849 and n.3) holds that as Augustus had the exclusive right to levy troops (Dio, 53.17.5), the sole criterion as to whether a governor was liable for *maiestas* was whether he had acted *iussu principis*. Mommsen relies on Dio (53.1.5.6) for this proposition, but the evidence of Dio on this question can more conveniently be considered when the *lex Julia maiestatis* of Augustus is discussed (pp. 266 ff.). At this stage it is sufficient to point out that Dio is against Mommsen, for he says that either the Senate or the *princeps* could authorize levies. It should also be pointed out that *maius imperium* was not exclusive to Augustus, for it was also conferred on Agrippa and Tiberius.^{31a} This is perhaps the decisive consideration, for a corporation sole would not have derived its charter from a power which more than one could hold.

In *Res Gestae* (34) Augustus records his pre-eminence in *auctoritas*, but equality in *potestas*, with his magisterial colleagues. As *potestas* was one of the attributes which enjoyed the protection of the *maiestas* law (*Dig.* 48.4.1.1), Augustus in effect attests that in his official capacity he received no special recognition from the *lex maiestatis*. The question is whether his pre-eminent *auctoritas* has any bearing on a

²⁹ Mommsen, *Staat* 2.2.840, 845, and *passim*; Greenidge, *Public Life* 340; Premerstein, 226-32; Syme, 313.1, 336 and n.2; Wickert, *RE* 22.2.2270-2. A consular *imperium* is assumed by Pelham, 69 and Grant, 426, 437 and n.1. Salmon (464-8) believes in two contemporaneous *imperia*, a consular in Rome and Italy, and a proconsular in the provinces. As to whether any adjective at all should be attached to *imperium*, see Béranger, 73.

³⁰ Mommsen, *Staat* 2.2. 845.2; 847-8; 854-5; 859-61; cf. Premerstein, 226, 231.

³¹ Pelham, 72; Syme, 313.1; Wickert, *RE* 22.2.2271-5; Salmon, 467, 469-70; Sattler, 69.

^{31a} Syme, 337, 389, 431, 433.

maiestas shift.³² *Auctoritas* expressed the Senate's function of sanctioning the People's acts and acting as the *consilium* of the magistrates; but as the Senate was only the sum of its members, the exercise of *auctoritas* was the function of individual senators, each of whom spoke with a degree of authority dependent on the point in the debate at which he was entitled to be consulted.³³ *Auctoritas* therefore essentially expressed *precedence*, the prior right to be consulted, and the right to expect the acceptance of the counsel which was tendered. The Samnites neglected to their cost the sound advice of Herennius Pontius, who was *auctoritate praestans*, and Q. Considius was *consilio auctoritate praestantior*.³⁴ There is a similar association in "*auctoritate omnibus praestiti*" (*Res Gestae* 34). While the *auctoritas* of Augustus is generally regarded as extra-constitutional,³⁵ it had a legal significance, although not on the constitutional level. It was on the principle of precedence that a jurist's opinion carried weight regardless of the merits of his view (Schulz, *Principles* 183-5). On a similar principle other fiduciaries followed Augustus in discharging *fideicommissa* imposed by codicil, although codicils were previously unknown: "*deinceps reliqui auctoritatem eius (sc. Augusti) secuti*" (*Inst.* 2.25pr). Augustus acted therein on the advice of Trebatius, "*cuius tunc auctoritas maxima erat*",³⁶ but not even this precedent established codicils *de iure*, for they were not fully recognized until Labeo wrote them (*Inst.* 2.25pr). Augustus' *auctoritas* had a similar persuasive, but

³² De Francisci (72-3) believes that there is a vital connection: "*Auctoritas rappresenta cioè un' idea che si accosta a quella di sovranità; idea che, data la contrapposizione a potestas, se non secondo la lettera ma secondo il contenuto, corrisponde al doppio concetto dell' imperium maiestasque populi Romani. Essa designa la posizione giuridicamente preminente dell' uomo, nella cui persona è connaturato il potere pubblico, in modo completamente diverso da quello con cui esso viene attribuito ai magistrati della Repubblica.*"

³³ Balsdon, *Auctoritas* 43-5; cf. Mommsen, *Staat* 3.2.1033-4; 1037-9; Schulz, *Principles* 178-80; Syme, 322.

³⁴ Balsdon, *Auctoritas* 44, citing Valerius Maximus 7.2. ext. 17 and Cicero, *Cluent.* 38.107.

³⁵ Premierstein, 187-90; De Francisci, 72; Syme, 313 and n.1; Grant, 452.5; Wickert, *RE* 22.2.2287-9; Salmon, 459; Sattler, 49.121.

³⁶ Whose opinions carried the greatest weight at that time. (tr.)

not mandatory force,³⁷ when he granted the *ius respondendi* to the more eminent jurists: "ut maior iuris auctoritas (sc. prudentium) haberetur, constituit ut ex auctoritate eius responderent" (*Dig.* 1.2.2.49).³⁸

Mommsen (*Staat* 3.2.1033 and n.1) holds that in the Republic there was no identification of *senatus auctoritas* with the *maiestas* of the People and its magistrates, although he believes that in the Principate the Senate possessed *maiestas*. It is clear that the latter view is not correct, if only because the Senate was not a corporate body. When Premierstein (188) says that the grant of *potestas* to Augustus was not in the gift of the Senate, but remained vested in the sovereign People, which continued to exercise its power directly by legislation and indirectly by delegation, he in fact means that the Senate did not have *maiestas*, which remained with the *populus Romanus*. The transitive verb *augere* does not have the same force as the intransitive *maior esse*. *Auctoritas* is the active element, the factor which initiates an increase; *maiestas* is the relationship resulting from the activity of *auctoritas*. In *maiestatem auxi* the *auctor* augments *maiestas*, and the result of his action is the passive concept *maiestas aucta*. In like manner *maiestas* is the subject of activity when it is diminished, resulting in the passive concept *maiestas minuta*. The *auctoritas* of Augustus is evidence not of a *maiestas* shift, but of his pre-eminently favourable position for the initiation of measures designed to augment *maiestas*.

It is presumably because it is not possible to show a technical transference of *maiestas* from the Roman People to Augustus that some authorities have postulated a different

³⁷ Buckland, 18; Schulz, *Principles* 186-7; *Legal Science* 112-3; Jolowicz, 369.

³⁸ To give their opinions greater weight he granted them the right to issue them on his authority. (tr.). Sattler (50.126) believes that Augustus exercised his *auctoritas* only in the field of private law, but the better view is that of Salmon (461) who, pointing out that *auctoritas* is derived from the same root as *augere* (cf. Mommsen, *Staat* 3.2.1034.1; Ferrabino, 53), sees its significance in the privilege which it gave Augustus of being the initiator or *auctor* of a policy. The expressions *me auctore* and *Caesaris auctoritate* do not mean that his *auctoritas* was the legal basis of the act (cf. Wickert, *RE* 22.2.2289; contra Grant, 446), but that it derived from his initiative, that he was responsible for the original motion.

concept of *maiestas* for the *princeps* and his house. Pollack (135-6; cf. 127-8, 140) puts it as follows:

Der *populus Romanus* vindizierte sich Majestät als Souverän gegenüber den auswärtigen Staaten und den Gliedern der eigenen Gemeinde; der 'magistratus *populi Romani*' aber als der sichtbare Vertreter, also Organ des souveränen Gemeindekörpers. Dem Prinzeps eignet Majestät, nicht weil er Souverän, nicht weil er Organ ist, sondern weil er erster einer in sich gleichen Gemeinschaft ist und diese seine Qualität als 'primus inter pares' durch den ihm zugebilligten Majestätsschutz gewährleistet wird . . . Die 'majestas' is nicht mehr das Attributiv einer öffentlich-rechtlichen Funktion, sondern das Insignium für das persönliche Ansehen des ersten Bürgers.³⁹

This characterization is partly correct, in that it postulates a form of *maiestas* which is *sui generis*, but it goes too far in discarding the concept of *maiestas populi Romani* entirely in relation to Augustus. The better approach may be to assume the co-existence of two *maiestas* concepts. The concept of *maiestas populi Romani* still obtained, in so far as Augustus' official capacity⁴⁰ was concerned, for any act against him

³⁹ (The *populus Romanus* asserted *maiestas* as the sovereign of foreign states and its own citizens; but the *magistratus populi Romani* asserted it as a representative, therefore as an organ of the sovereign community. The princeps possessed *maiestas* not as a sovereign nor as an organ, but as the first in a community that was equal in itself, and this quality of his as *primus inter pares* was secured by the *maiestas*-protection afforded him . . . *Maiestas* was no longer the attribute of a constitutional function, but the insignium of the personal status of the First Citizen.) (tr.) Premerstein (13) stresses the personal position of the *princeps*, "bei dem nicht, wie in der Republik, die Person für das Amt, sondern umgekehrt das Amt für die Person da ist". Cf. Wickert, *RE* 22.2.2098: "Träger der *maiestas* aber, in dem sie Gestalt gewonnen hat, ist nun der Princeps"; Levi, *Augusto* 169: "l'uomo che per la sua sacrosanctitas riassumeva in sé la *maiestas* del popolo".

⁴⁰ Pollack (135-6) is wrong to describe the Principate as a magistracy. See Pelham, 79.1. But Augustus held either a regular magistracy or *imperium* and/or *tribunicia potestas* continuously from 27 B.C. to A.D. 14, and therefore fell under *Digest* 48.4.1.1, on one or the other ground, throughout his Principate.

which immediately diminished the People's *maiestas* continued to be punished under the *crimen maiestatis populi Romani imminutae*. But a second concept developed concurrently with *maiestas populi Romani*, although independently of it, and it was for the protection of this new concept that a new crime came to be punished, the crime which Tacitus (*Ann.* 3.24.3) refers to as "laesarum religionum ac violatae maiestatis". The suggestion is that, at least for the Augustan period, it is not technically correct to describe this new offence as the *crimen maiestatis populi Romani imminutae*. It was not connected with *maiestas populi Romani*, and did not derive its existence from the *leges maiestatis*.⁴¹ At the same time, however, it did not derive from a mere arbitrary exercise of power, but from a series of valid principles.

The nature of the 'new' *maiestas* has been well analysed by Dumézil (16-18), who argues that magisterial *maiestas* in the Republic had two separate sources. On the one hand it was a derivative of *maiestas populi Romani*, and on the other hand the magistrates were the successors to the kings. Ultimately both sources went back to Jupiter, "puisque la maiestas populi Romani vient du pacte initial, des auspices et des promesses de Jupiter, valables pour toute la durée de Rome, et que si le rex avait la maiestas, c'était comme réplique terrestre de Jupiter." "*Maiestas Iovis*" expressed something more than a *maior-minor* relationship, something which corresponded not only to *maior* but also to *maximus*, that is, to a *maior* whose counterpart was all the rest. The notion of 'superiority' which the word implies was elevated to 'supremacy', thus tending to be a quality rather than a relationship. This quality was possessed not by a group, but by an individual, and it is from this sense of *maiestas* that the word 'majesty'⁴² is derived. This was the form of *maiestas* possessed by the kings as the earthly homo-

⁴¹ Cf. Balduinus Franciscus, 1014: "Non temere tamen est quod Tacitus, ubi de iudiciis maiestatis quaeritur, admonet discernenda esse rei publicae et Caesarum; nam et sub his alia novaque maiestatis definitio esse coepit". (It is not for nothing that Tacitus, when criticizing *maiestas* trials, reminds us that a distinction should be drawn between the *maiestas* of the State and that of the emperors; for under the latter a new definition of *maiestas* began to be formulated.)

⁴² *Majesté* in Dumézil, 18.

logues of Jupiter. The Republic parcelled out the heritage of the kings, fragmenting *maiestas Iovis* among the magistrates, and emphasizing *maiestas populi Romani* as the source, thus obscuring the ultimate origin in Jupiter. The fragments were re-assembled in one individual in the person of Augustus.

Dumézil's interpretation is a reasonable characterization of the majesty of Augustus on the non-legal level, but it does not attempt to isolate the steps by which Augustan majesty reached a position of such general acceptance that it became possible to bring its protection within the ambit of the criminal law. It is proposed to examine certain principles which seem to have played the major part in the process of giving legal recognition and protection to the majesty of Augustus.

"*Sacrosanctus in perpetuum ut essem et quoad viverem tribunicia potestas mihi esset per legem sanctum est*"⁴³ (*Res Gestae* 10). The authorities are fairly evenly divided between those who accept Dio (49.15.5-6; 53.32.5) for the grant of tribunician sacrosanctity, and no more, in 36 B.C., and the full tribunician power for life in 23 B.C.,⁴⁴ and those who follow Appian *B.C.* (5.132.548) and Orosius (6.18.34, 20.7) in postulating the full grant in 36 B.C.⁴⁵ But the important aspect for the present purpose is the grant of sacrosanctity, which on both traditions took place in 36 B.C.⁴⁶—*eo nomine* according to Dio, and as part of the full power attested by Appian and Orosius.

Sacro sanctus meant 'sanctified by an oath',⁴⁷ and

⁴³ It was decreed by statute that I was to be sacrosanct for ever and to have the powers of a tribune for life. (tr.)

⁴⁴ Strack, 360-3, 370, 381; Lengle, *RE* 7A.2.2486; Syme, 336; Grant, 449-51; Broughton, 2.400; Jones, *Augustus* 115; Siber, *Verfassung* 281-2; Wickert, *RE* 22.2.2285-6; Sattler, 46-9. Hardy (64) and Kelly (17-18) accept Dio 51.19.6 for a full grant in 30 B.C. Hammond (81) and Salmon (468) are non-committal.

⁴⁵ Mommsen, *Staat* 2.2.872.6; 873.1; Greenidge, *Public Life* 338; Pelham, 74; Premerstein, 265-6—with the rider that the power was abandoned in 27 B.C., to be granted anew in 23; Hohl, *Caesar* 67, 74. Strack argues rather well (360-3) that Orosius and Appian in fact mean the same as Dio.

⁴⁶ Cf. Siber, *Verfassung* 282. Jones, *Augustus* 115-6, while decrying the rights which made up Augustus' full tribunician power, does not extend his criticism to sacrosanctity.

⁴⁷ Mommsen, *Staat* 1.236; Lengle, *RE* 7A.2.2460.

thus it was that tribunician sacrosanctity was originally protected by an oath of the plebs,⁴⁸ the so-called *lex sacrata* which Von Fritz (894, 901-3) believes was equated to *plebei scitum*, connoting not a *lex*, but the plebeian oath to commit a crime, namely to kill the violator of a tribune.⁴⁹ Subsequently a *lex populi*—traditionally a Valerio-Horatian of 449 B.C.—indemnified the plebs against prosecution, but the oath remained the only effective guarantee.⁵⁰ Even in the period of Caesar and Augustus the traditional origin of sacrosanctity in an oath gave a "religiösen Schimmer" to the *tribunicia potestas*, although in law *sacro sanctus* now meant merely that particular form of inviolability for which the sanction was *sacrum esse*.⁵¹ It is disputed whether the enforcement of this sanction by pure tribunician *coercitio* was lawful,⁵² or was based on a distortion of the tradition for party purposes in the late Republic.⁵³ The sources reflect this uncertainty, and seem to suggest that the conflict between the principle of *coercitio* (or direct action), which derived from the tradition of inviolability *religione*, and the principle of recourse to due

⁴⁸ Mommsen, *Staat* 2.1.286-7; Niccolini, 27, 48; Lengle, *RE* 7A.2.2455-7.

⁴⁹ Lengle (*RE* 7A.2.2461) denies the historicity of the oath to kill. Cf. Kübler, *RE* 1A.2.1685, 1687.

⁵⁰ Von Fritz, loc. cit. Cf. Strachan-Davidson, 1.13. For the view that the Valerio-Horatian substituted a legal for a sworn guarantee, although the plebs also insisted on a renewal of the oath, see Mommsen, *Staat* 2.1.303-4; *Straf* 581 and n.3; and Niccolini, 46-8. There were other forms of *lex sacrata*, of which the most significant is that whereby a group bound itself by oath to a leader in a military undertaking (Niccolini, 41; Von Fritz, 895-7), the oath being termed a *sacramentum* (Niccolini, 41) or *coniuratio* (Von Fritz, 895-6), and those bound by it being known as *militēs sacrati* (Niccolini, 41; Von Fritz, 895). The oath was frequently sworn by clients to their *patronus* for the purposes of a military undertaking which he contemplated (Von Fritz, 895).

⁵¹ Mommsen, *Staat* 2.1.303-4; cf. Strachan-Davidson, 1.9-10; Siber, *Verfassung* 231, 282. Kübler (*RE* 1A.2.1685) notices that popular regard for the *sacrosancta potestas* was so great that it was even credited to other magistrates—"populi Romani magistratibus sacrosanctis" (*Bell. Hisp.* 42.4); but Strack (368.5) believes that this text is corrupt.

⁵² Mommsen, *Straf* 46; Strachan-Davidson, 1.17; Niccolini, 71; Lengle, *RE* 7A.2.2475-6. Cf. Gellius' "summam coercendi potestatem" (13.12.9).

⁵³ Mommsen, *Staat* 2.1.305; *Straf* 932—against *Straf* 46; Siber, *Analogie* 30-1; *Verfassung* 229.

process of trial, which derived from inviolability *lege*, was never satisfactorily resolved.⁵⁴ The cases in the late Republic perpetuate the confusion, for there are examples of tribunes resorting to direct action against the *homo sacer* by attempting summary execution or consecration, while more or less contemporaneously the more mature procedure of a prosecution for *perduellio* or *maiestas* is invoked. It was pure *coercitio*, derived from the sworn rather than the legal aspect of sacrosanctity, when the tribune C. Atinius Labeo attempted in 131 B.C. to hurl the censor Q. Metellus Macedonicus from the Tarpeian Rock for having omitted his name from the Senate list, but was prevented by a colleague's intercession.⁵⁵ Cicero (*Dom.* 47.123) says that Atinius consecrated Metellus' goods, but denies the legal efficacy of this "tribunician madness based on ancient precedent". The elder Pliny, the only source to discuss both the capital and the pecuniary measures against Metellus, says that after the intercession at the Rock he lived on charity because his goods had been consecrated following his condemnation (*N.H.* 7.44.144), which suggests that the consecration was effective. An analogous case is the violent arrest of the consul L. Marcius Philippus for interrupting M. Livius Drusus in 91 B.C. (*Val. Max.* 9.5.2). But in other cases the affronted tribune prosecuted for *perduellio* or *maiestas*, such as the charge of *maiestas* brought by C. Flaminius against his father (p. 31), and the prosecution of P. Scipio by Ti. Claudius Asellus, "cui equum in censura ademera" (*Gell.* 3.4.1)—clearly a *maiestas* charge: "P. Africanus 'pro se contra

⁵⁴ Dionysius (6.89) confuses the tradition of an oath in 494 B.C., and a *lex* in 449 B.C., when he describes the tribunate as having been made sacrosanct νόμος τε καὶ ὅρκῳ (cf. Lenglé, *RE* 7A.2.2460; Siber, *Analogie* 28), and attests the primitive sanction of ἐξάγιστος ἔστω καὶ τὰ χρήματα αὐτοῦ Δήμητρος ἱερὰ. Cf. Livy, 3.55: "ut qui tribunus plebis . . . nocuisset eius caput Iovi sacrum esset, familia ad aedem Cereris Liberi Liberaeque venum iret". Cf. also Appian, *B.C.* 2.108.

⁵⁵ Livy, *Per.* 59; Pliny, *N.H.* 7.44.143-4. Mommsen (*Straf* 932.1) compares the hurling of Sextus Lucilius from the Rock by Publius Laenas in 87 B.C. (*Vell.* 2.24.2), but this is not a certain case of *coercitio*, for Velleius goes on to attest the regular prosecution of other Sullans by Laenas: "quibus diem dixerat".

⁵⁶ Whom he had, as censor, deprived of his equestrian ranking. (tr.)

Tiberium Asellum' de multa ad populum''.⁵⁷ (Gell. 6.11.9). There are some borderline cases. When T. Annius Luscus criticized the action of Ti. Gracchus against M. Octavius, Gracchus both arrested (*coercitio*) and tried to prosecute him (Plut. *Gracch.* 14.4-5; Livy, *Per.* 58). In 169 B.C. a freedman of the tribune P. Rutilius appealed to the tribunes against a directive of the censors C. Claudius Pulcher and Ti. Sempronius Gracchus. When Rutilius alone interceded, the censors indicted the freedman for *maiestas*. Rutilius having proposed a law in the *concilium plebis* to invalidate the censor's location of public revenues, the censors appeared to speak against it. Claudius was interrupted and ordered a *praeco* to restore order. Rutilius left the meeting, complaining that he had been deprived of his authority. The next day he consecrated the *bona* of Gracchus (*coercitio*), for having prosecuted the freedman after he had appealed to a tribune, and indicted Claudius for having taken the meeting out of his hands. He then seems to have prosecuted *both* censors for *perduellio*. A day having been fixed for each accused, Claudius was tried first. It was a close finish, for the final acquittal was by a mere eight centuries. The case against Gracchus was dropped.⁵⁸ The significant fact emerging from all the confusion is that in the late Republic tribunician sacrosanctity was a particularly fertile field for extensive interpretation (cf. Mommsen, *Staat* 2.1.305 and n.1; Siber, *Analogie* 29).

Dio (49.15.5-6) describes the grant of sacrosanctity to Octavian in 36 B.C. as τὸ μήτε ἔργῳ μήτε λόγῳ τι ὑβρίζεισθαι,⁵⁹ adding that the sanction was τοῖς αὐτοῖς τὸν τοιοῦτό τι δράσαντα ἐνέχεσθαι οἷσπερ ἐπὶ τῷ δημάρχῳ ἐτέτακτο.⁶⁰ Dio does not at this point enlarge on "the penalties which had been prescribed in the case of a tribune", but elsewhere (53.17.9) he says: ἢ τε ἐξουσία ἢ δημαρχικὴ καλουμένη . . . δίδωσί σφισι (the emperors in general) . . . μήθ' ὑβρίζεσθαι, κἂν ἄρα τι καὶ

⁵⁷ The speech of P. Africanus in his defence, when brought before the People by Tiberius Asellus on a proposal for a fine. (tr.)

⁵⁸ Livy, 43.16.4-16. Schlesinger (58.1) believes that there was *consecratio bonorum* against both censors, but that it had to be confirmed by the People, hence the *perduellio* charge.

⁵⁹ Protection from outrage by word or deed. (tr.)

⁶⁰ Whoever infringed this protection was liable to the same penalties as those prescribed in the case of a tribune. (tr.)

τὸ βραχύτατον μὴ ὅτι ἔργῳ ἀλλὰ καὶ λόγῳ ἀδικεῖσθαι δόξωσι, καὶ ἄκριτον τὸν ποιήσαντα αὐτὸ ὥς καὶ ἐναγῇ ἀπολλύναι⁶¹ (cf. Zonaras, 7.15). This was not, in Dio's opinion, an extension of the powers of Republican tribunes, but was specifically an aspect of their power ὅσῃν περ τὰ μάλιστα ἐγένετο⁶² (53.17.10). Furthermore, the tribunician power was one of the institutions which was taken over from the Republic ὥς πού καὶ ἕκαστα ἐνομίσθη⁶³ (53.17.11). As ἄκριτον in Dio 53.17.9 means proceedings where *provocatio* was excluded (Mommsen, *Staat* 1.151.3; Strachan-Davidson, 1.17 and n.4), it seems that Octavian had the full tribunician power of *coercitio*. He would also, however, have had the alternative of prosecuting for *perduellio* or *maiestas*, with the same scope for extensive interpretation as in the case of the tribunes.

Dio (49.38.1) attests a comprehensive grant by Octavian to his sister Octavia, and to Livia, in 35 B.C.: (Καίσαρ) τὰ μὲν ἐπινίκια ψηφισθέντα οἱ ἀνεβάλετο, τῇ δ' Ὀκταουίᾳ τῇ τε Λιουίᾳ καὶ εἰκόνας καὶ τὸ τὰ σφέτερα ἄνευ κυρίου τινὸς διοικεῖν, τό τε ἀδέας καὶ τὸ ἀνύβριστον ἐκ τοῦ ὁμοίου τοῖς δημάρχοις ἔχειν ἔδωκεν.⁶⁴ Hohl (*Caesar* 70) finds a precedent for this grant in the traditional rule concerning the Vestals, whereby "(Numa eas) . . . venerabiles ac sanctas fecit"⁶⁵ (Livy, 1.20.3), but Strack (368.5) rightly points out that *sanctae ut essent* was not the same as *sacrosanctae ut essent*. Dio (59.3.4) seems to support Strack, for he makes no reference to ἐκ τοῦ ὁμοίου τοῖς δημάρχοις⁶⁶ when he reports the grant of τὰ τῶν ἀειπαρθένων⁶⁷ to the sisters of the emperor Gaius. As no other precedent suggests itself, it is assumed that the grant of sacrosanctity

⁶¹ The tribunician power protects the emperors from outrage and if they consider themselves injured by deed or word, no matter how trivial, they are entitled to execute the perpetrator without trial, like an outlaw. (tr.)

⁶² As it was at its zenith. (tr.)

⁶³ Substantially as it then existed. (tr.)

⁶⁴ Octavian deferred the triumph voted to him, but granted Octavia and Livia the right to set up statues and to administer their assets free of tutelage, together with security and protection from outrage on the same basis as the tribunes. (tr.)

⁶⁵ Numa made them reverend and holy. (tr.)

⁶⁶ On the same basis as the tribunes. (tr.)

⁶⁷ The rights of Vestal Virgins. (tr.)

to Octavia and Livia marked the introduction of a new principle in Roman public life, and a principle fraught with anomaly. Although the grant of the powers of an office, separated from the office itself, had been recognized since at least 211 B.C. (Siber, *Verfassung* 208, 214-8, 281), it is startling to find the rule applied to women, who were absolutely ineligible for office (Mommsen, *Staat* 1.493; Schulz, *Principles* 208). It is true that the separation of office and powers was often expressly designed to empower someone who was otherwise ineligible (Siber, *Verfassung* 214), and indeed this is precisely what happened when the patrician Octavian received tribunician powers (cf. Grant, 450.7). But this was only a relative ineligibility, for Octavian could have become a plebeian by adoption, as Clodius had done in 59 B.C. Nothing, however, could have made a woman eligible for office. And how were injuries to Octavia and Livia to be punished? They could obviously not have resorted to *coercitio*, nor does the power to prosecute seem to have been available to them. The general prohibition against prosecutions by women (Mommsen, *Straf* 369; Schulz, *Principles* 209) does not seem to have admitted of any exceptions in the *comitia*, while the limited special cases in the *iudicia publica* (Mommsen, *Straf* 369 and nn. 4, 6, 7) do not include the sort of charge which a violation of sacrosanctity would have involved. Mommsen (*Straf* 369 and n.6) asserts, on the authority of Paninian (*Dig.* 48.4.8), that women had an unlimited right of accusation for *maiestas*. But as Papinian's precedent is "Iulia (Fulvia?) mulier" who gave Cicero evidence of the Catilinian conspiracy, he probably means no more by "etiam mulieres audiuntur" than the admissibility of their evidence. In any event, the absolute inaccessibility of the *comitia* is decisive, for no conceivable extension of the *maiestas* statutes, as they stood in 35 B.C., could have made the *quaestio* available to Octavia and Livia.

Why was sacrosanctity granted to Octavian's women-folk? Mommsen (*Staat* 2.819 and n.3) believes that Octavia was honoured as Antony's wife, rather than as Octavian's sister, but Hohl (*Caesar* 70) points out that Antony rebuffed her at Athens in 35 B.C., and on her return to Rome Octavian told her to leave Antony's house (Plut. *Ant.* 53.2, 54.1). Hohl's argument can be taken further. The release of Octavia from

tutelage, simultaneously with the grant of sacrosanctity (Dio, 49.38.1), would not have been in Antony's interest if he had a *manus* marriage with her, nor would the release in such a case have been within Octavian's power. It therefore seems that she was released from the agnatic tutelage of Octavian. And Dio's contrasted τὰ μὲν ἐπινίκια . . . τῇ δ' Ὀκταούῳ (49.38.1) implies that Octavian deferred the immediate honour of a triumph, but approved an alternative which was no less an honour to him, although mediately. Furthermore, when Octavia wanted to join Antony in Greece, Octavian agreed ὥς οἱ πλείους λέγουσιν, οὐκ ἐκείνη χαριζόμενος, ἀλλ' ὅπως περιυβρισθεῖσα καὶ καταμεληθεῖσα πρὸς τὸν πόλεμον αἰτίαν εὐπρεπῇ παράσχοι⁶⁸ (Plut. *Ant.* 53.1). Plutarch here detects a pretext for war in language strikingly reminiscent of that which he uses when he credits Caesar with a similar pretext (p. 128 n.41). But the significant difference is that Caesar relied on an injury to actual tribunes, while Plutarch says that an affront to Octavia gave Octavian an equally valid excuse. This seems to make it clear that Octavia was not honoured for Antony's sake, but the matter goes even further. When Octavia was rebuffed, Octavian delivered polemics in the Senate and to the People (Plut. *Ant.* 54.1, 55.1). The incident is not to be explained as a stock example of Caesarian tendentiousness, nor as an error by Plutarch. Octavian would not have based a propaganda point on something which was demonstrably untenable (cf. p. 175), nor would Plutarch have recorded an event which depended on a striking constitutional novelty, unless the evidence had supported him. Octavian's polemics on the incident probably made much play of his *dignitas*, and Plutarch would have recalled that Caesar had also linked his dignity to tribunician sacrosanctity.

Although Mommsen (*Staat* 2.2.819.3) holds that Octavian, in making the grant to Octavia and Livia himself—ἔδωκεν (Dio, 49.38.1)—acted under his triumviral authority,⁶⁹ he elsewhere (*Staat* 2.2.872-81, 909 and n.1) suggests a better

⁶⁸ Not, according to most authorities, in order to please her, but so that she might be insulted and neglected, and so give him a good reason for war. (tr.)

⁶⁹ Hammond (*RE* 17.2.1865) credits the grant to the Senate, while Ollen-dorff (*RE* 13.1.905) assumes an unspecified legal process.

answer when he assumes that the grant to Octavian of the tribunician power for life in 36 B.C. (as Mommsen dates it) was made by a *lex* which was the prototype of the *lex de imperio Vespasiani*.⁷⁰ Even if sacrosanctity alone was granted in 36, a *lex* can still be assumed (Dio, 49.15.3-5; *Res Gestae* 10; Wickert, *RE* 22.2.2284). A prototype of Vespasian's law would have included the discretionary clause which was authorized for Vespasian: "utique quaecumque ex usu rei publicae maiestateque divinarum humanarumque publicarum privatarumque rerum esse censebit ei agere facere ius potestatesque sit ita uti divo Augusto . . . fuit"⁷¹ (*ILS* 1.244). This may have been the source of Octavian's authority for the grant to Octavia and Livia. It is possible, therefore, that Octavian decreed, *ex maiestate publicarum rerum*, that whoever injured Octavia or Livia would be deemed to have violated the sacrosanctity of Octavian himself. It would follow that a breach of the decree would have been punished by Octavian, either by *coercitio* or by a prosecution for *maiestas* in the *comitia tributa*.

The grant of sacrosanctity to Octavia and Livia is one of the strands in the formation of the concept of the "*domus Caesaris*".⁷² The answer to the question as to whether this concept is to be regarded as an extension of *maiestas populi Romani* depends on the view taken of the relationship between tribunician sacrosanctity and the *crimen maiestatis*. Mommsen (*Straf* 538-9) has postulated that the *crimen maiestatis* originated in the revolutionary period, to protect the *maiestas* which he believes was originally the tribunician equivalent of the *potestas* of patrician magistrates. When the tribunes became proper magistrates the *crimen maiestatis tribuniciae imminutae* became the *crimen maiestatis populi Romani imminutae*. To the general arguments against this view (Pollack, 162-4) may be added the objection that Mommsen's hypothesis must presuppose a *maiestas plebis* from which tribunician *maiestas*

⁷⁰ Hammond (82) believes that Vespasian's law was the first of its kind. Syme (336.2) assumes a *lex de imperio* in 23 B.C.

⁷¹ He shall have the same right and power as the emperor Augustus to deal with or do whatever he deems advantageous to the State or consistent with divine, human, public or private *maiestas*. (tr.)

⁷² The house of Caesar. (tr.)

was derived, but such a concept is not justified (p. 13). The passages on which Mommsen relies do not assist him. He cites Cicero (*Invent.* 2.17.52), claiming that it is a case of diminished tribunician *maiestas*. But Cicero says: "At enim qui patria potestate, hoc est privata quadam, tribuniciam potestatem, hoc est populi potestatem, infirmat, minuit maiestatem."⁷³ The diminished *maiestas* is clearly that of the People, the source of *tribunicia potestas*. Mommsen also relies on Asconius 61C, but enough has been said about that attempt at extensive interpretation.⁷⁴ It is not clear what comfort Mommsen gets from Livy 3.24.9, for the only *maiestas* in issue there is that of the consuls. It is, however, to be noticed that some support for Mommsen is furnished by Greenidge (*Public Life* 100.1), who believes that in the later law resistance to the will of any other magistrate was charged as *vis*, while resistance to a tribune was always *maiestas*. The inference to be drawn from this would be far-reaching, for it would mean not only a tribunician origin for *maiestas*, but also the restriction of Saturninus' law to injuries to tribunes. But Greenidge has not noticed that the resistance of P. Rutilius' freedman to the will of the censors was *maiestas* (p. 216), while Caesar's resistance to Bibulus was one of the matters on which the Optimates were so anxious to interview him (p. 97).

Niccolini (49-50), accepting the crime of *tribunicia potestas minuta*, believes that it was capable of extension to persons other than tribunes. He cites the case of the lictor who was hurled from the Tarpeian Rock for interfering with the *viator* of the tribune Icilius (Dionys. 10.31), and argues that the tribune's sacrosanctity extended to the person of the official who was charged with the execution of the tribune's orders. Ciaceri (253-4) takes the argument further by postulating sacrosanctity as the source of the extension of the *maiestas* law to the person and dignity of the *princeps*.⁷⁵ He argues that it is because of the sacrosanctity of the *princeps*

⁷³ It is a diminution of *maiestas* to impair tribunician power, which is granted by the People, by the exercise of paternal power, which is of a private nature. (tr.)

⁷⁴ See pp. 72-5. See also the arguments of Pollack (165-6) and Schisas (8-10).

⁷⁵ Levi (152) makes substantially the same point as Ciaceri when he says: "La condizione sacrosancta riconosciuta alla sua persona era la sanzione

that *Digest* 48.4.1pr. equates the *crimen maiestatis* to *sacrilegium*, but this view is based on a misunderstanding of the crime of *sacrilegium* (pp. 288-9). Ciaceri also relies on Tacitus (*Ann.* 3.56.2): "id summi fastigii vocabulum (sc. potestatem tribuniciam) Augustus repperit, ne regis aut dictatoris nomen adsumeret ac tamen appellatione aliqua cetera imperia praemineret."⁷⁶ Tacitus clearly has in mind the legislative⁷⁷ and executive (cf. Grant, 446-53) aspects of the power, when he loosely compares it with *cetera imperia*. If it had been the source of the *crimen maiestatis*, Tacitus would not have failed to mention his bugbear at this point.

Although the tribunician origin of the *crimen maiestatis* is not accepted, it should be pointed out that the apparent inability of the Romans to resolve the conflict between *religio* and *lex* as the theoretical basis of sacrosanctity cannot be overlooked, and it is possible that this conflict remained unresolved when tribunician sacrosanctity became the special preserve of the emperor and his house. The particularly wide field of extensive interpretation which was inherent in the concept, and the possibility of arbitrary action offered by the notion that the tribunes were *religione inviolati*, made tribunician sacrosanctity one of the principal avenues for the importation of new aspects into the *crimen maiestatis*.

"*Iuravit in mea verba tota Italia sponte sua et me belli quo vici ad Actium ducem depoposcit. Iuraverunt in eadem verba provinciae Galliae Hispaniae Africa Sicilia Sardinia*"⁷⁸ (*Res Gestae* 25). The *coniuratio* of 32 B.C. is the basis of Premierstein's analysis of a fundamental facet of the Augustan Principate.⁷⁹ His argument is that the key to Augustus' position is his vast expansion of the *clientela* concept, rather

giuridica di quella eccezionalità personale superiore, che si realizzava già nel campo religioso con la serie degli onori di carattere sacrale."

⁷⁶ The tribunician power enabled Augustus to give his supremacy an appellation which allowed him precedence over other magistrates without obliging him to call himself king or dictator. (tr.)

⁷⁷ Which is the aspect stressed by Augustus himself in *Res Gestae* 6.

⁷⁸ The whole of Italy voluntarily took an oath of allegiance to me and demanded me as its leader in the war which I afterwards won at Actium. The same oath was taken by the provinces of Gaul, Spain, Africa, Sicily and Sardinia. (tr.)

than his constitutional powers and authorities (6, 13, 22, 25). The Republic had known oaths to faction leaders, such as the Italian oath to Drusus in 91 B.C., Cinna's oath to Sulla in 88, and the oaths to Catiline in 63 and Antony in 44 (27, 30, 31, 61.1). It is noted that the oath was extra-constitutional,⁸⁰ and did not furnish a legal basis for Octavian's position, being sworn to him in his private capacity as a party leader, and as the contemplated commander in the coming war (36, 40, 42, 44). His formal appointment as commander by the Senate and People was a mere formality, for the oath was a universal suffrage which silenced opposition to his preferment (43), and it would have been effective even without an appointment as commander (51). The deponents were in the *fides* of Octavian, being bound to assist him with arms (44-45); "in fidem sese dare" also (significantly) expressed a client relationship between Rome and an ally (18). Mommsen (*Staat* 2.2.792-3) puts forward the theory that the only oath was the military service-oath (*sacramentum*), sworn at a *princeps*' accession and at each anniversary thereof, but Premierstein shows that soldiers took the oath of allegiance together with civilians (73-75). The oath was termed a *sacramentum* because it replaced the old military service-oath, but unlike the true sacrament it was sworn to a commander in his personal capacity, not as the holder of *imperium*; it was therefore a personal tie between the *princeps* and his troops, sworn before his formal recognition (78, 81). The oath was not affected by the 'restoration of the Republic', for it had nothing to do with the *res publica*.

Premierstein reconstructs the terms of the oath, relying on the oath of Gangra (Dessau, 2.8781), which was sworn to mark either Augustus' 12th consulship in 5 B.C., or the incorporation of Paphlagonia in Galatia in 3 B.C.; the oath of Aritium (Dessau, 1.190), sworn to Gaius on his accession; and the oaths of Assos (Dittenberger, 2.481-5), sworn to Gaius at

⁷⁹ Premierstein's hypothesis is approved, among others, by Kolbe, 32—"eine grundstürzende Erkenntnis"; Syme 288 and n.3; Wickert, (*Review of Premierstein*)—with reservations.

⁸⁰ Contra Levi (135-6), who believes that the oath gave Octavian a new form of *imperium* superior to the triumviral, and "sanava la posizione legale di Ottaviano".

the same period, and of Sestinum (*CIL* 11. 5998a). The argument which Premierstein (47-52) bases on these inscriptions⁸¹ is that the basic element of these oaths is the formula introduced by Octavian in 32. The provision in the Aritium oath, whereby the *inimici* of the *princeps* are also the *inimici* of the deponents, corresponds to the situation in 32, when there was a private feud (*inimicitia*) between Octavian and Antony, but Antony was not declared a *hostis*.⁸² But war was declared on Cleopatra (37, 51; cf. Syme, 291; Grant, 419), so that the *inimici* of Octavian became associated with the *hostes populi Romani*. This is reflected in the Aritium oath: "eosque, qui in eum hostili animo fuerint, mihi hostes esse ducam".⁸³ The oath of Gangra has the same basic elements, but with an overlay of Hellenism: the attestation by Greek gods and Augustus; the express undertaking of an obligation to the patron's children, whereas in the West a duty to the patron's family was an assumed result of *patrocinium*;⁸⁴ and the duty to report hostile acts by the *princeps'* enemies (47-8, 66). In the oath of Gangra ἐχθροὶ expresses both *inimici* and *hostes*, but the absence of πολέμιοι, which can only mean *hostes*, is significant (51). Both the oath of Gangra and that of 32 were sworn by provincials as well as Roman citizens (50).

While the oath of Aritium required mutuality of *inimici* and *hostes* only, that of Gangra imposed the same φίλοι and ἐχθροὶ. Premierstein's explanation (48-9) is that the oath of

⁸¹ Homo (232-3) discusses the first three oaths, but without linking them to the oath of 32.

⁸² 37, 48. Cf. Syme, 288, 291-2; Grant, 417, 419; Siber, *Verfassung* 272. For the view that Antony was a *hostis* see Levi, 136 and Sattler, 20.

⁸³ I shall regard as my enemies those who show hostility towards him. (tr.)

⁸⁴ The (Western) oath of Aritium does indeed not refer to the children, but Dio, 59.3.4 says that Gaius granted his sisters τὸ . . . τοὺς ὄρκους τοὺς ἐς τὴν ἀρχὴν αὐτοῦ φέροντας καὶ ὑπὲρ ἐκείνων ὁμοίως γίνεσθαι. (The right to have the oaths that were sworn to his rule sworn also to them.) Dio cannot be dismissed as having been influenced by the Eastern oath, for his account of the terms of the oath—that the deponents would respect Gaius and his sisters (59.9.2)—corresponds closely to Suetonius' version (*Gai.* 15.3). If the oath of Sestinum refers to this grant by Gaius (which is doubted by Gelzer, *RE* 10.1.385), a significant innovation in the Western oath must be assumed.

Gangra corresponded to the typical "Klientelvertrag"—that is, to a *maiestas* treaty—while that of Aritium followed a less common form; in the West the main concern was a front against the *princeps*' enemies, while the Eastern division of states into 'subject' and 'free and federate' cast the emphasis on solidarity with like-minded persons in other cities. But this view is weakened by Premierstein's own observation (48) that the Italian oath to Drusus provided for τὸν αὐτὸν φίλον καὶ πολέμιον ἡγήσασθαι Δρούσῳ.⁸⁵ And in fact the typical *maiestas* treaty confined mutuality to enemies, such as those with the Aetolians, Rhodes, and Mitylene.⁸⁶ In any event there were no mutual friends in the oath of 32, for Premierstein (49) deletes this part of the Gangra oath in order to arrive at Octavian's "Urformel".

The official line emphasized the voluntary nature of the oath—*sponte sua* (*Res Gestae* 25)—in order to present Octavian's *clientela* as the lineal descendant of the Republican *Gefolgschaft* (62-3). But the provincial oath (*Res Gestae* 25) is not described as spontaneous, for there was no need to show that subjects had acted voluntarily (62). In fact there was considerable pressure, even in Italy (42, 62, 81; cf. Syme, 284, 287, 289). The Republican tendency for a *clientela* to be inherited⁸⁷ made it a simple matter for the following of Augustus to pass to Tiberius by an oath to the latter⁸⁸ which, although extra-constitutional, strengthened Tiberius' hand when he negotiated his accession with the Senate (56-9). After Tiberius the oath became a standing formality on accession, with annual renewals (59-60). Renewal became associated with the oath to the *princeps*' *acta*, whose compulsory nature tended to deprive the oath of allegiance of its voluntary

⁸⁵ The friends and enemies of Drusus to be regarded as their own. (tr.)

⁸⁶ Täubler, 63; 64; 50-1, 56, 456. The negotiations preceding the Aetolian treaty contemplated the same enemies and friends (Täubler, 64.1), but the Aetolians appealed to the Senate against Scipio's terms before the final draft (Täubler, 44).

⁸⁷ Cf. Mommsen, *Staat* 3.1.65; Greenidge, *Public Life* 8-9; Grant, 320.

⁸⁸ Wickert (*Review of Premierstein* 334-7) is critical of this attempt to derive a dynastic principle from the oath. Decision would be easier if there were currently any measure of agreement as to precisely when and how a man became emperor.

character (61). The absence of Thrasea Paetus from the annual renewal in A.D. 66 was *maiestas* (68; cf. Tac. *Ann.* 16.22, 28).⁸⁹

The relationship recognized by the oath of 32 was not unlike a *maiestas* relationship. Octavian was the *maior* as against Italy and the Western provinces, in a relationship which was not created by law, and which depended on physical force for its maintenance. There was also the typical bilaterality of rights and duties—*do ut des*—for the *beneficium* which the deponents received was *libertas* (cf. Kunkel, 335-6). But there are important differences. As the *patrocinium* was extra-constitutional, there can be no suggestion that Octavian's position as the sole *maior* made him a corporation sole, and indeed there is clear evidence that his *maiestas* was not the same as that of the *populus Romanus*. The oath imposed an obligation on the deponents *vis-à-vis* the members of the house of the *maior*, a concept quite inconsistent with *maiestas populi Romani*. The only possible possessors of *maiestas* proper were the *populus Romanus*, and the magistrates who derived their *maiestas* from it. There is no reason to believe that in the Republic the members of a magistrate's household enjoyed the protection of the *maiestas* law. Indeed this was probably impossible in law, for *delegatus delegare non potest*. In any event, the protection which the oath gave to the *princeps'* family did not arise derivatively, but was an original incident of the *clientela* relationship—by implication in the West, and expressly in the East. It is this aspect which made the *patrocinium* a better instrument than sacrosanctity for the creation

⁸⁹ Premierstein (117-31) is on less safe ground when he postulates a "cura et tutela rei publicae universa" granted to Augustus in 27 B.C. by *lex*, and extending to the whole State the personal *patrocinium* recognized by the oath of 32. The theory is based (118.1, 120-2) on Dio's τὴν προστασίαν (53.12.1), which Premierstein takes to mean *patronatus*, but which probably means *principatus*. Cf. Mommsen, *Staat* 2.2.774.5; Grant, 452.5; Wickert, *RE* 22.2.2068; *Review of Béranger* 543-4; Sattler, 38 and n.91; 39 and nn. 92, 93. Premierstein seems to have overlooked the implication of his belief (129) that his *lex* of 27 included the discretionary clause known for Vespasian (p. 220), for Dio's φροντις καὶ προστασία τῶν κοινῶν πᾶσα is clearly not the text of the clause "quaecumque . . . censebit", but only Dio's interpretation of its effect. To assume the *ipsissima verba* "cura et tutela rei publicae universa" in the *lex* is to postulate an unusually succinct style for a Roman statute.

of the *domus Caesaris*. Sacrosanctity was limited to those to whom it had been expressly granted, but τοῖς τέκνοις ἐγγόνου αὐτοῦ⁹⁰ (Oath of Gangra, Dessau, 2.8781) was indeterminate and elastic. Apart from Octavian's polemics in respect of the affront to Octavia (p. 219), there seems to be no case where the sacrosanctity of a female member of the house had significant consequences.⁹¹ But the oath of allegiance had results which appear with some prominence in the sources. Tiberius Gemellus would not have the guard officers take part in his enforced suicide, ὥς οὐκ ἐξὸν αὐτοκράτορος ἀπογόνους πρὸς ἐτέρων ἀναιρεῖσθαι⁹² (Philo, *Leg. ad Gai.* 5). Burrus advised Nero that the praetorians would not execute Agrippina: "praetorianos toti Caesarum domui obstrictos esse"⁹³ (Tac. *Ann.* 14.7). It may be that the grant of sacrosanctity in 35 B.C. was not repeated, as the oath of 32 was regarded as an adequate safeguard as far as women were concerned. In a certain sense the oath was not so much a substitute for sacrosanctity, as a cognate notion, for its roots were similar. Sacrosanctity went back in the final analysis to a *lex sacrata*, a sworn obligation to protect inviolability (pp. 213-4); the *coniuratio* of 32 likewise originated in another form of *lex sacrata*, the *sacramentum* or *coniuratio* sworn by clients to a patron who contemplated a private military undertaking (p. 214 n.50).

Premmerstein (70-71; cf. Klingmüller, *RE* 1A.2.1672) asserts that the oath had only a moral and religious force, but that the perjurer was guilty of *impietas* (=ἀσέβεια), and that this concept was invoked for those injuries to the *princeps* which could not be punished under the *lex maiestatis*; but as the Principate evolved the concept approached *maiestas* more and more closely. Premmerstein's hypothesis is acceptable, but with modifications. In the first place, Premmerstein states his proposition too narrowly when he describes the perjurer's

⁹⁰ To his children and grandchildren. (tr.)

⁹¹ Unless the man whom Augustus condemned to the galleys for claiming to be the son of "clarissimae ac sanctissimae sororis eius Octaviae" (Val. Max. 9.15.2) is an example.

⁹² Since it was not lawful for the emperor's descendants to be killed by other men. (tr.)

⁹³ The praetorians were bound to the entire house of the emperors. (tr.)

crime as *impietas*. He correctly cites Tacitus' *laesarum religionum* (*Ann.* 3.24.3) as an example of *impietas*, but he does not notice that Tacitus goes further: *ac violatae maiestatis*. The full significance of Tacitus' criticism of Julia's case now begins to be clear. The *maiestas* which was *violata* was not, and did not claim to be, *maiestas populi Romani*, for the latter would have been *imminuta* or *minuta*, and not *violata*. Tacitus was perfectly familiar with the expression *maiestas populi Romani minuta* (*Ann.* 1.72.3), and intended to convey quite a different notion by *violata maiestas*, namely the 'majesty' of Augustus. This new form of *maiestas* arose from the twin concepts of tribunician sacrosanctity and *patrocinium*, both of which had respectable Republican antecedents. From both was derived the notion that the respect due to the new 'majesty' was founded on an oath, so that a violation was *laesa religio*. From *patrocinium* came the additional feature of a relationship close enough to a *maiestas* relationship to lead to the eventual adoption of the same word to characterize Augustus' position. From both concepts, but in particular from *patrocinium*, came the *domus Caesaris*, the extension of the emperor's 'majesty' to the members of his house. The word *maiestas* is used to describe both the personal 'majesty' of Augustus and the 'majesty' which members of his house possessed through him. When Augustus introduced the practice of addressing his soldiers as *militēs* instead of *commilitōnes*, he forbade the use of the latter expression by members of his family, "ambitiosius id existimans quam aut ratio militaris aut temporum quies aut sua domusque suae maiestas postularet"⁹⁴ (Suet. *Aug.* 25). The 'majesty' of Augustus was widely proclaimed by the Augustan poets: "neque parvum carmen maiestas recipit tua"⁹⁵ (Hor. *Ep.* 2.1.257-8); "maiestas tua" (Ovid, *Trist.* 2.512). And the general recognition was extended to members of his house. Ovid, instructing his wife to intercede for him with Livia, tells her not to hide her nervousness, but "sentiat illa te maiestatem pertimuisse suam"⁹⁶ (*Pont.* 3.1.155-6). The most striking

⁹⁴ Considering it too ingratiating in the light of military discipline, the peaceful conditions prevailing, and his majesty and that of his house. (tr.)

⁹⁵ Your majesty will not accept a humble poem. (tr.)

⁹⁶ Let her see that you are overawed by her majesty. (tr.)

passage is Suetonius (*Aug.* 37): "Exegit etiam ut quotiens consulatus sibi daretur binos pro singulis collegas haberet, nec optinuit reclamantibus cunctis satis maiestatem eius imminui quod honorem eum non solus sed cum altero gereret."⁹⁷ Here the *maiestas* which was diminished by a collegiate consulship was clearly not *maiestas consulis*, for that owed its very existence to a collegiate office. The 'majesty' of Augustus was diminished precisely because it was associated with magisterial *maiestas*, which meant its subordination to *maiestas populi Romani*.

It is this use of the same word to express two different ideas which is responsible for much of the confusion in regard to the crime of *maiestas* in the Principate. This is precisely the anomaly which troubled Tacitus: "legem maiestatis . . . cui nomen apud veteres idem, sed alia in iudicium veniebant, si quis . . . maiestatem populi Romani minuisset"⁹⁸ (*Ann.* 1.72.3). Suetonius is similarly conscious of ambiguity when he says that Vespasian, on his accession, lacked "auctoritas et quasi maiestas quaedam"⁹⁹ (*Vesp.* 7). If injuries to the *princeps* had been consistently termed *impietas*,^{99a} an important constitutional principle—that the *populus Romanus* was still the State—would not have been obscured, and the *crimen maiestatis*,

⁹⁷ He asked for two colleagues instead of one in his consulships, but there was a universal outcry against this on the ground that his majesty was diminished quite enough as it was, since he held the consulship not alone but with a colleague. (tr.)

⁹⁸ The *maiestas* law had the same title in olden times but there was a different basis of prosecution, namely the diminution of the *maiestas* of the Roman People. (tr.)

⁹⁹ Overriding influence and, as it were, a sort of *maiestas*. (tr.)

^{99a} As they were in Greek: ἐπεὶ τὸ γε ὕβρισθαι πρὸς τινος ἢ καὶ τὸ ἡσεβῆσθαι πρὸς τινος (ἀσεβειάν τε γὰρ ἤδη καὶ τὸ τοιοῦτον ὠνόμαζον καὶ δίκας ἐπ' αὐτῷ πολλάς ἐσήγον. (To be insulted or treated impiously by anyone—they were already calling such an injury 'impiety' and were bringing many prosecutions for it) (Dio, 57.9.2). Because the Greek historians had no single equivalent for *maiestas* (p. 1) they were able to avoid the ambiguity of the Latin. For the *crimen maiestatis* proper, at least in the form of plots against the State or its magistrates, the almost invariable expression is ἐπιβουλὴ or τὸ ἐπιβουλεύειν. It is only for affronts to the emperor's majesty that ἀσέβεια is used.

as distinct from the *crimen laesae pietatis*, would have been spared much criticism.

As the penalty for violations of sacrosanctity matured from direct action into recourse to the public criminal law (pp. 213-6), so the sanction for breaches of the oath of allegiance assumed a less primitive form. The oath to the Republic, sworn before Cannae in 216 B.C.,¹⁰⁰ has the primitively phrased sanction: "me Iuppiter optimus maximus domum familiam remque meam pessimo leto adficiat".¹⁰¹ The oath of Aritium has greater precision of expression: "expertem patria incolumitate fortunibus omnibus faxiant".¹⁰² This is almost a literal equivalent of the penalties under Caesar's *maiestas* law (pp. 155-66): *expertem patria incolumitate* is interdiction; *expertem fortunibus omnibus* is confiscation, although of the whole property, instead of the half prescribed by Caesar—but when the oath of Aritium was sworn to Gaius, the prescribed penalty for *maiestas* was already total confiscation (cf. Tac. *Ann.* 3.50.6). It is suggested that the oath, without any violation of tradition, could be and probably was given a more effective sanction than a mere moral and religious force. The concept of *clientela* was a legal one (MommSEN, *Staat* 3.1.76), and from an early date the criminal law concerned itself with a patron's breach of his duty to his client.¹⁰³ But the public law did not interfere when the client breached his duty, leaving it to the patron to proceed in his "Hausgericht".¹⁰⁴ It has been maintained (MommSEN, *Straf* 566; Siber, *Verfassung* 20) that the old *clientela* was obsolete in the historical period, and had no connection with the great political *clientelae* of the late Republic; but this proposition is too wide. When C. Herennius refused to testify against L. Marius, on the ground that the Marii were clients of the Herennii, Marius did not deny the *clientela*, but claimed that his aedileship had

¹⁰⁰ Livy, 23.53.10ff. Niccolini (41) regards this oath as a *lex sacrata*, while Premierstein (51.2) understands it as the formal ancestor of the oath of 32.

¹⁰¹ May Jupiter the greatest and best bring utter ruin on me, my house, my household and my estate. (tr.)

¹⁰² May I lose my country, my security and all my possessions. (tr.)

¹⁰³ "Patronus si clienti fraudem faxit sacer esto"—Servius ad *Aen.* 6.609, supposedly citing the XII Tables.

¹⁰⁴ MommSEN, *Straf* 566.1; Siber, *Verfassung* 19. Greenidge, *Public Life* 8 mistakenly regards the client's breach as *perduellio*.

released him from it (Plut. *Mar.* 5). And when Proculus (*Dig.* 49.15.7.1) equates the position of a *maiestas* ally to *clientes nostros*, he shows that the legal principles developed by the old *clientela* were still valid in his day. There is no reason in principle why some of those rules should not have been taken over by the great political allegiances, and in particular the institution of the "Hausgericht". The survival of that tribunal would explain the precision of the oath of Arritium. A domestic tribunal, although only a quasi-judicial body, was expected to conform to certain rules. Thus, a father who killed his son while hunting, for adultery with his step-mother, was deported by Hadrian "quod latronis magis quam patris iure eum interfecit: nam patria potestas in pietate debet, non atrocitate consistere"¹⁰⁵ (*Dig.* 48.9.5). The oath of Arritium dealt with a relationship which was in several ways analogous to a *maiestas* relationship, and it laid down for Octavian's guidance that when he punished offenders in his domestic tribunal, the penalties prescribed for the *crimen maiestatis* were to be imposed.

Some authorities have maintained that Julia and the paramours were dealt with by Augustus' domestic tribunal, but it has been suggested that the forum was a public criminal court (pp. 203-4). The question is whether there existed concurrently under Augustus both a domestic tribunal ("Hausgericht") and a public criminal court presided over by the princeps ("Kaisergericht"), as Volkmann (63-93, 105-26) and Kelly (26) believe. It is generally agreed that there was an imperial criminal court under Augustus,¹⁰⁶ but there is less agreement on the extent of its jurisdiction and the manner of its creation. Mommsen (*Straf* 260-5) postulates a jurisdiction extending throughout the empire, independent of the categories laid down by the criminal statutes, and having an

¹⁰⁵ Because in killing him he acted more like a brigand than a father. Paternal power should be based on dutiful conduct, not cruelty. (tr.)

¹⁰⁶ Mommsen, *Straf* 260-5; Volkmann, 63-93; Jones, *Jurisdiction* 481-2, 485-7; Kelly, 38-46; Lengle, *Straf* 74-76. Siber (*Verfassung* 292-3) is not convinced of the court's existence, and serious doubts are expressed by McFayden (231-42). For a recent re-examination of the whole question see Bleicken, *Senatsgericht*, 66ff., 79ff.

arbitrary discretion on sentence. Other authorities limit the jurisdiction to the ambit of certain criminal statutes only, namely those concerning murder, adultery, *maiestas*, and forgery (Volkmann, 89), to which Jones (*Jurisdiction* 481) adds extortion. The better view is that of Kelly (38-46), who makes out a good case for the restriction of the jurisdiction to cases of *maiestas*, and even then only in the case of acts which concerned Augustus himself. If, however, violations of imperial majesty were punished in the imperial criminal court, the use of the domestic tribunal for the same purpose would have been an unnecessary duplication. It is not likely that Augustus arbitrarily tried some of these cases in his criminal court, and others in his domestic tribunal.¹⁰⁷ It is suggested that the distinction drawn between the imperial court and the domestic tribunal is unrealistic. Volkmann (106) correctly sees *renuntiatio amicitiae* as the social penalty suffered by *amici* who incurred Augustus' displeasure, but this was surely independent of any forensic or quasi-forensic procedure. When Tiberius said of Cn. Piso that in certain circumstances "odero seponamque a domo mea, et privatas inimicitias non vi principis ulciscar"¹⁰⁸ (Tac. *Ann.* 3.12.4), he made it clear that renunciation of friendship was divorced from the exertion of *vis principis*. When Appuleia Varilla was charged with adultery and *maiestas*, Tiberius absolved her of the *maiestas* charge, and urged her family to banish her for the adultery (Tac. *Ann.* 2.50.1, 4). The only domestic tribunal in question was that of Appuleia's family, despite the fact that she was a great-niece of Augustus—*Caesari conexa*. Tiberius' part in the case was limited to the public criminal law. It seems safe to postulate that the only court of the *princeps* was the imperial court. But this does not mean the abandonment of the suggestion (pp. 230-31) that the oath of 32 was originally sanctioned in Octavian's domestic tribunal. The suggestion is that the domestic tribunal of Augustus was gradually elevated

¹⁰⁷ For the confusion which can arise from the separation of the *Hausgericht* and the *Kaisergericht* see Kelly's conflicting assertions that Julia's paramours were tried in the *Hausgericht* (10-11) and in the *Kaisergericht* (36-37).

¹⁰⁸ I shall hate him and exclude him from my house, but I shall not use my power as emperor to avenge private enmities. (tr.)

to the status of a public criminal court, and that it took cognisance of the crime which flowed from the oath—*laesa religio ac violata maiestas*—and imposed the penalty ‘suggested’ by the oath, namely interdiction and confiscation. As the *quaestio maiestatis* could not deal with a crime which did not touch on *maiestas populi Romani*, the alternatives were either to amend the *lex maiestatis*, or to create a new court. The former course would have been a blatant revelation of the realities of the new majesty, but a new court was practicable, particularly if it could be introduced gradually, by Augustus’ ‘back door technique’. It is doubtful whether the imperial criminal court was established under an enabling *lex*,^{108a} and indeed no *lex* was needed. The super-patrocinium of 32 B.C. was qualitatively and quantitatively different from its predecessors, for it contributed substantially to the new majesty which, without formal legal recognition, successfully challenged the *maiestas* of the State. It was equally capable of gradually giving the domestic tribunal of a *patronus* a status which put it on a par with the public court established under the *maiestas* laws. As Augustus became more sure of his ground, he was able to extend the jurisdiction of his court to cases properly falling under the *crimen maiestatis*,¹⁰⁹ and so to initiate that blurring of the demarcation line between majesty and *maiestas*, which was eventually to lead to the appropriation of *maiestas* as the exclusive property of the emperor.¹¹⁰ But sufficient of the dividing line survived under Augustus to lend weight to Tacitus’ criticism (*Ann.* 3.24.3) that, by bringing ‘majesty’ under the *crimen maiestatis*, Augustus exceeded the limits of the *lex maiestatis*.

There remain three questions arising out of Julia’s case. Why was Julia herself, one of the beneficiaries under the new

^{108a} Thus Volkmann (89) and Kelly (42, 64, 70). Mommsen (*Straf* 260 and n.2) sees the court’s formal basis in the grant in 30 B.C. of the right ἑκκλησιον δικάζειν (Dio, 51.19.7), but Kelly’s arguments against this view (15-22) are decisive. See also Jones, *Jurisdiction* 485-7.

¹⁰⁹ Kelly (40-2) particularly notices the conspiracy of Cinna (pp. 193-7) as a case dealt with by the imperial criminal court, although in his view (37) this was because the *maiestas* of Augustus was identified with that of the State.

¹¹⁰ For imperial *maiestas* in the Dominate see Kübler, 543.

dispensation, charged with *laesa religio ac violata maiestas*? Why did Iullus Antonius anticipate harsher treatment than that which the other adulterers received? And why was it precisely in 2 B.C. that Augustus found it necessary to take action against a state of affairs which had prevailed for a number of years, and which was known to him a long time before he acted?^{110a}

The first question becomes significant when the case of Julia is compared with that of Appuleia Varilla, a great-niece of Augustus, who was prosecuted in A.D. 17 (Tac. *Ann.* 2.50). The charge was a twofold one of *maiestas*: insulting remarks about *divus Augustus*, Tiberius, and Livia; and the commission of adultery by one who was *Caesari conexa*. It was held that the adultery fell to be dealt with under the *lex Julia de adulteriis*—"de adulterio satis caveri lege Iulia visum" (*Ann.* 2.50.2)—and Tiberius urged that instead of suffering the penalty prescribed by the *lex*, she be banished by her family's domestic tribunal (2.50.4). Tiberius not only refused (uncharacteristically) to follow an Augustan precedent, but by leaving the case to the domestic tribunal he seems to have gone out of his way to make it clear that adultery by a member of the imperial house was not *maiestas*. Even her paramour, one Manlius, was merely interdicted from Italy and Africa, instead of being relegated to an island (2.50.5). Koestermann (91) suggests that Tiberius acted leniently because the case was not politically important, as Appuleia did not represent a threat; he proceeds (94-95) to compare the case of Lepida (Tac. *Ann.* 3.22-3) where, on charges of adultery and *maiestas*, Tiberius was more severe, possibly because he had a political motive against M. Lepidus, the brother and defender of the accused. This view seems to be supported by the case of Claudia Pulchra, a cousin of Agrippina and a descendant of Augustus (Tac. *Ann.* 4.52.1, 4). In A.D. 26 she was charged with adultery with Furnius, and with having attempted to use poison and spells against Tiberius. As both she and Furnius were condemned (4.52.6), it is clear that the adultery charge succeeded (cf. Ciaceri, 254), but that the case had a purely

^{110a}On the prior knowledge of Augustus see Dio 55.10.13; Macrobi. *Sat.* 2.5.3, 4, 5, 6, 8, 9.

political motive is shown by Agrippina's taunt to Tiberius, that the real reason for Claudia's downfall was her association with Agrippina (4.52.5). It would seem that although the punishment of adultery with a member of the imperial house as *violata maiestas* was always inherent in the *patrocinium*, the principle was not invoked except in cases of pressing need.

Before attempting an answer to the questions which have been posed (pp. 233-4), it is necessary to identify what is believed to have been the last of the three great concepts which shaped the majesty of Augustus, namely the grant of the title *pater patriae*. The title had been applied to Augustus long before it was officially conferred,¹¹¹ so that the official grant on 5 February, 2 B.C., by the unanimous action of Senate and People,¹¹² was simply the formal recognition of a position which had long obtained. This *de facto* occupation of a superior position, followed by *de iure* recognition, conforms to the postulated manner of a *maiestas* shift (pp. 119-20 above), and in addition there are all the marks of a *maiestas* relationship.¹¹³ There is, firstly, the constant comparison of Augustus and Jupiter, which goes back to the original concept of *maiestas* as an attribute of the gods (pp. 4-6). Thus Ovid, when discussing the title of *pater patriae*: "Hoc tu per terras quod in aethere Iupiter alto nomen habes. Hominum tu pater, ille deum Romule concedas" (*Fasti* 2.131-3). To Ennius (*Ann.* 6.153) Jupiter was "divomque hominumque pater rex" (Dumézil, 17), and in an obvious allusion to this Manilius (1.7) has: "tu Caesar, patriae princepsque paterque". Jupiter was "invictus" (Ovid, *Fasti* 5.126), and so was Augustus as *pater patriae*: "sit pater invictus patriae" (Manilius, 1.925). Augustus stood next to Jupiter in the *maiestas* hierarchy: "tu secundo Caesare

¹¹¹ Dio, 55.10.10; Horace, *Carm.* 1.2.50; 3.24.25-9; Ovid, *Fasti* 2. 127-30: "Sancte pater patriae, tibi plebs, tibi curia nomen hoc dedit; hoc dedimus nos tibi nomen eques. Res tamen ante dedit. Sero quoque vera tulisti nomina: iampridem tu pater orbis eras". See also Alföldi, 2.115.

¹¹² *Res Gestae* 35.1; Suet. *Aug.* 58.1-2; Ovid, *Fasti* 2.127-8.

¹¹³ Cf. Alföldi on the title of *pater patriae*: "ein Oberbegriff, der das ganze Wesen des Prinzeps umfasst" (2.116); "diese namen (sc. Caesar Augustus, Divi filius, pater patriae) kennzeichnen viel genauer seine wahre Position als die sorgfältig gezählten Iterationsziffern der 'republikanischen' Funktionen" (2.118); and particularly, "den neuen, väterlichen Majestätsbegriff" (2.121).

regnes" (Hor. *Carm.* 1.12.51-2; cf. Dumézil, 16.3); "quodcunque est alto sub Iove, Caesar habet" (Ovid, *Fasti* 2.138—the *pater patriae* passage). There is, secondly, the emphasis on the *beneficia* enjoyed by the *minor*, for *clementia* was one of the principal virtues of the *pater patriae*: "sed placidus facilisque parens veniaequae paratus".¹¹⁴

The crucial aspect is the relationship between paternalism and *maiestas populi Romani*. Premierstein (166-7), observing that *pater* often meant *patronus* from the point of view of the clients, believes that the concept of *pater patriae* was derived from that of *clientela*. This would mean that the conferment of the title in 2 B.C. was the culmination of the process which began with the oath of 32. It would follow, on the view of *patrocinium* which has been submitted, that the *pater patriae* was the possessor of 'majesty', but not of technical *maiestas*. Alföldi (2.119) rejects Premierstein's hypothesis, although he concedes that the Republican *pater patriae*, before the transformation of the concept under Caesar and Augustus, was sometimes addressed as *patronus*, and that Caesar's position as *parens patriae*¹¹⁵ took on "die Farben des Patronates". Indeed Caesar's title had much more than the 'colour' of *patrocinium*, for Nicolaus of Damascus (Jacoby, 407) attests simultaneous decrees concerning the oath of allegiance to Caesar in 44 B.C., and the grant to him of the title of *parens patriae*.¹¹⁶ The sources are inclined to stress the connection between the exclusively Roman concept of *patria potestas* (cf. Gaius, 1.55; *Inst.* 1.9.2) and the Augustan title of *pater patriae*. Seneca (*Clem.* 1.14.2) observes that the title of *pater patriae* was not merely honorific, but expressed the *patria potestas* which bound *princeps* and citizens. Dio (53.18.3) notices that the title gave the emperors the authority which fathers had over their children. Strabo (6.4.2 p. 288C) uses language which suggests that the title involved something approaching a technical transfer of power: χαλεπὸν δὲ

¹¹⁴ Ovid, *Pont.* 2.2.117. Cf. Alföldi (2.114), who also cites *Res Gestae* 3.1; Velleius, 2.86.2; Seneca, *Clem.* 1.10.3; 1.13.4-5.

¹¹⁵ Which Alföldi (2.106-14) regards as the lineal ancestor of the Augustan title.

¹¹⁶ Cf. pp. 137-8, for Premierstein's analysis of the oath to Caesar as the forerunner of the oath of 32 B.C.

ἄλλως διοικεῖν τὴν τηλικαύτην ἡγεμονίαν ἢ ἐνὶ ἐπιτρέψαντες ὡς πατρί.¹¹⁷

Salmon (477) believes that the title marked the transfer of the State into the *potestas* of Augustus, as if into the power of a *paterfamilias*, and gave his Principate its final form. The testimony of Augustus himself seems to confirm the latter point, for he ends *Res Gestae* (35.1) with the conferment of the title (cf. Hohl, *Augustus* 338), and he described it as the achievement of his supreme ambition (Suet. *Aug.* 58.2). There are strong associations between *patria potestas* and *maiestas*, for *patria maiestas* was used as the equivalent of *patria potestas*.¹¹⁸ It seems to follow from Cicero (*Quirit.* 2.5) that *patria potestas* could be raised to a public level, as an attribute of the People itself: "Vestros denique honores, quos eramus gradatim singulos adsecuti, nunc a vobis universos habemus, ut quantum antea parentibus . . . tantum hoc tempore universum cuncto populo Romano debeamus."¹¹⁹ There is, perhaps most significantly of all, the strong identification of the *pater* and the State suggested by Valerius Messalla when saluting Augustus as *pater patriae*: "Quod bonum . . . faustumque sit tibi domuique tuae, Caesar Augustus (sic enim nos perpetuam felicitatem rei publicae et laeta huic precari existimamus)."¹²⁰ (Suet. *Aug.* 58.2). But the same passage tends to indicate the final stage in the development of Augustan 'majesty', rather than a technical *maiestas* shift, for *tibi domuique tuae* is not difficult as an incident of *clientela*, but is quite inconsistent with *maiestas populi Romani*.¹²¹

¹¹⁷ The government of so vast an empire is difficult unless it is entrusted to one man, as if to a father. (tr.)

¹¹⁸ Livy, 4.45.8; 8.7.15; Val. Max. 7.7.5; Quint. *Declam.* 376.

¹¹⁹ The honours in your gift, which I previously hoped to receive gradually and individually, have now been showered on me all at once. As I once owed everything to my father, so do I now owe it to the entire Roman People. (tr.) Cf. Livy, 44.13.4-5: "Ptolemaei legati . . . gratias egerunt: plus eos senatui populoque Romano quam parentibus suis . . . debere."

¹²⁰ May good and auspicious fortune befall you and your house, Caesar Augustus (for in praying for this we are praying for lasting good fortune for the State and happiness for Rome). (tr.)

¹²¹ The grant to Livia of the title *parens patriae* or *mater patriae*, although vetoed by Tiberius (Tac. *Ann.* 1.14.2-3), was also an easy development of the patrocinal concept, but could not have been contemplated as an extension of technical *maiestas*.

It is not possible to follow Mommsen¹²² in regarding the title as merely honorific. Apart from the evidence of Seneca, Dio, and Strabo (p. 236), there is the statement of Suetonius (*Aug.* 58.1) that it was conferred on Augustus as a *cognomen*, which leads Alföldi (2.120 and n.448) to suggest that it had acquired the character of "einer Herrscherbezeichnung, eines kaiserlichen Monopols". Alföldi (loc. cit.) holds that the appropriation of the title by others would have fallen under the *crimen maiestatis*, and cites the charge against Cn. Piso, who allowed his soldiers to call him "parens legionum" (Tac. *Ann.* 2.55.4, 80.4; 3.13.3). This is not an apt example, for Tiberius consistently refused the title of *pater patriae* (Tac. *Ann.* 1.72.2; 2.87.2), and it would be going too far to suggest, as an alternative argument, that in Piso's case Tiberius defended the memory of *divus Augustus*. Piso's unofficial title is rather to be regarded as part of his general abuse of his proconsular *imperium*. There is better evidence that the title had legal significance:

Relegatus morari non potest Romae . . . quia communis patria est, neque in ea civitate in qua moratur princeps vel per quam transit: iis enim solis permissum est principem intueri, qui Romam ingredi possunt, quia princeps pater patriae est¹²³ (*Dig.* 48.22.18).

Furthermore, the literary chorus which greeted the new title, and subsequently stressed its significance,¹²⁴ is not paralleled by the reception accorded to Augustus' other titles and offices, and seems to show a realization that an event of

¹²² *Staat* 2.2.779.2; cf. Premierstein, 173 and Salmon, 477. Jones (*Augustus* 117) rather sweepingly dismisses "harmless offices and titles, such as . . . *pater patriae*".

¹²³ Those who have been banished are not allowed to remain in Rome, because it is the fatherland of everyone. Nor are they allowed to be in a territory which the emperor is visiting or through which he is travelling; for only those who are entitled to enter Rome are allowed to set eyes on the emperor, because he is the father of his country. (tr.)

¹²⁴ Ovid, *Fasti* 2.127-48; *Trist.* 2. 39, 181, 574; 4.4.13-15; *Pont.* 2.117-22. Manilius, 1.7, 925. Seneca, *Octavia* 477-8; *Clem.* 1.5.7; 1.10.3; 1.13.4-5; 1.14.2 Strabo, 6.4.2 p.288C. Velleius, 2.86.2. Suetonius, *Aug.* 58.1-2. Dio, 53.18.3; 55.10.10.

profound significance had taken place. Ovid (*Trist.* 4.4.13-15) is particularly significant: "Ipse pater patriae . . . sustinet in nostro carmine saepe legi. nec prohibere potest, quia res est publica Caesar"¹²⁵ (cf. *Pont.* 2.8.19-20). And the very fact that it was found advisable to give formal acknowledgement to a title which had long enjoyed unofficial currency, suggests that a formless concept was converted into a constitutional element.

The *domus Caesaris* does not fall under the concept of the *paterfamilias*, for it was of the essence of *patria potestas* that the *pater* stood alone, as against his entire *familia*—in this case, the State. The inclusion of the *domus* would have to mean that the *paterfamilias* was made up of the *princeps* and some of his dependants, as against the rest of the community. It is safer to assume that elements of both *patrocinium* and *patria potestas* were fused in the position which was finally achieved in 2 B.C. In his capacity as the supreme *patronus*, Augustus could demand that the respect and protection owing to him be extended to his house; but as the supreme *pater* he could demand respect and protection from all the rest, including the members of his own house.

The majesty of Augustus, in common with the *maiestas populi Romani* with which it co-existed, was an unstable relationship, requiring constant vigilance for its survival (cf. p. 8). Instinsky (21-6) shows that under Nero the concept of *Securitas Augusti* was officially expressed as a legend on coins, to be followed under Galba and Otho by coins inscribed *Securitas Populi Romani*, which was a concept quite distinct from *Securitas Augusti*. Although Instinsky (16-17) believes that the word *securitas* as used in relation to the Augustan period (Vell. 2.89.4, 103.3) had only a general meaning in regard to the community as a whole, and had not yet acquired the differentiated conceptual values which it afterwards expressed, he at least concedes that Augustan *securitas* was "Vorspiel, . . . Vorklang späterer Jahrzehnte". The suggestion is that this "Vorspiel, Vorklang" can be expressed by the

¹²⁵ He acquiesces in my frequent description of him in my poems as the father of his country. Indeed he cannot object, for the emperor is the State. (tr.)

formula: *maiestas populi Romani—crimen maiestatis populi Romani imminutae*; '*maiestas*' *Augusti—crimen laesarum religionum ac violatae maiestatis*.

The moral aspect of 'majesty' is important. Notice has already been taken (p. 5) of the stress placed by Ovid (*Fasti* 5.11.52) on the moral values which were involved in the birth of *Maiestas*, but these should be briefly recapitulated in the light of Dumézil's view (14-15) that this passage in Ovid is the most valuable source for the nature of the new 'majesty'. The birth of *Maiestas* is described thus: "Honor placidoque decens Reverentia voltu corpora legitimis inposuere toris. hinc sata *Maiestas*"¹²⁶ (vv. 23-5). *Maiestas* sat resplendent in purple and gold, and next to her were "Pudor et Metus"¹²⁷ (vv. 27-9). The assault of the Giants having been broken by Jupiter (vv. 35-42), "his bene *Maiestas* armis defensa deorum restat et ex illo tempore culta manet; assidet inde Iovi, Iovis est fidissima custos et praestat sine vi sceptrum tenenda Iovi"¹²⁸ (vv. 43-6). *Maiestas* having come down to earth (47), "illa patres in honore pio matresque tuetur"¹²⁹ (49). These concepts should be linked to the moral obligations which were regarded as resting on the *pater patriae*: "Si quaeret PATER URBIUM subscribi statuis, indomitam audeat refrenare licentiam" (Hor. *Carm.* 3.24.27-9).¹³⁰

In 2 B.C. the seal of full official recognition was placed on the personal majesty which Augustus had been steadily building up since the days of the triumvirate. His position now was such that it was no longer possible for him to condone the irregular conduct of Julia. What may previously have been merely the exercise by Julia of "the prerogatives of her station" (Syme, 426) now became a direct threat to the new majesty.

¹²⁶ Honour lay down on the marriage-bed with seemly, gentle-faced Reverence. From their union *Maiestas* was born. (tr.)

¹²⁷ Modesty and Awe. (tr.)

¹²⁸ Majesty, well defended by these arms of the gods, survives and is thenceforth enduringly revered. She sits beside Jupiter, is his surest shield, and assures his peaceful tenure of the throne. (tr.)

¹²⁹ Protects fathers and mothers with due piety. (tr.)

¹³⁰ If he would have 'Father of Cities' inscribed on his statues, let him boldly curb unrestrained licence. (tr.) For the identification of *pater urbium* with *pater patriae* (although prior to the official conferment of the latter title) see Wickham (1.259, s.v. *pater urbium*).

Lawful wedlock was the hallmark of Maiestas, Pudor was her companion, and *refrenare licentiam* was the duty of the *pater patriae*. The continuance of a situation in which these values were flouted would have exposed the new majesty to grave danger. An example had to be set, and its setting was so managed that the action taken to defend 'majesty' would, at the same time, underline the true nature of the new concept. The procedure which was adopted encompassed all three elements which had made the principal contribution to the creation of 'majesty'. The paramours had breached their sworn duty of respect towards a member of the imperial house, and this was *laesae religiones*. But in so doing they had injured Augustus, not only in his tribunician sacrosanctity (*laesae religiones* again), but also as the universal *pater*. In the latter regard the crime was now for the first time given a name—*violata maiestas*. This crime was now meaningful in the sphere of the public criminal law, because the title *pater patriae* had been officially conferred, and was legally significant. Julia was an injured party from the point of view of the protection which the patrocinal oath gave her, but she was a transgressor *vis-à-vis* the *pater patriae*. In the final analysis it was the situation resulting from the new official title of *pater patriae* which was emphasized by the prosecutions. The universal *paterfamilias* stood in splendid isolation on a peak from which even the members of the *domus Caesaris* were excluded. At that level his immediate *familia* was merged with the general body of citizens, although at a lower level it occupied a superior position as against the rest. For the protection of this unique pre-eminence the *lex maiestatis* and the *lex de adulteriis* were both legally inapposite and politically inadequate. It was not a question of statutory categories of crimes and periods of prescription. There was only one principle in issue: *Nemo me impune lacessit*. And, to give the final point to the lesson, Iullus Antonius was chosen to receive the most severe treatment of all, for the precise reason that he was married to Marcella, the daughter of Octavia and the niece of Augustus (Vell. 2.100. 3-4). The point having been made, the other paramours could be allowed peaceful exile. But in the case of a member of the imperial house the supreme penalty had to be exacted, so that those who stood closest

to the throne might know that there was only one Father of the State. Dessau (1.467) believes that the precedent established by Augustus in 2 B.C. was responsible for "die vielen missbräuchlichen Anwendungen des Majestätsgesetzes unter den folgenden Regierungen." It would perhaps be more correct to say that Augustus, by introducing the crime of 'violated majesty', and by deliberately allowing the dividing line between this new concept and the *crimen maiestatis* to remain obscure, set the pattern for the ambiguity which marked the crime of *maiestas* under Tiberius and succeeding emperors, an ambiguity which was probably not resolved until the age following that of the great classical jurists of the late second and the third century A.D., when majesty and *maiestas* were fused in the person of the emperor.

The disgrace of the younger Julia (the daughter of the Julia who was relegated in 2 B.C.) is of interest both in regard to the principle of 'violated majesty', and because the poet Ovid was in some way involved in it. The facts are that Julia¹³¹ died in exile in A.D. 28, twenty years after her condemnation and relegation for adultery (Tac. *Ann.* 4.71.6-7; cf. Suet. *Aug.* 65); that Tacitus classed her case with that of her mother as an abuse of the laws (*Ann.* 3.24.2-3); that her husband, L. Aemilius Paullus, conspired against Augustus and was executed (Scholiast on Juvenal, 6.158); and that D. Silanus, one of her paramours, was excluded from the friendship of Augustus, went into voluntary exile without having been prosecuted, and was allowed to return in A.D. 20 (Tac. *Ann.* 3.24.5-7). Julia's death in A.D. 28, twenty years after her relegation, seems to suggest that her trial was in A.D. 8,¹³² but a more complex position is attested by the Scholiast on Juvenal (6.158), who says that Paullus was executed, Julia was relegated and recalled, but subsequently again exiled for her vices, and her brother Agrippa Postumus was relegated to Sicily because of his incest with her and his *feritas*. Hohl (*Augustus* 339-42) notices that Paullus was consul *ordinarius* in A.D. 1, but was replaced by M. Herennius Picens as suffect

¹³¹ Who, as Hohl (*Augustus* 340) observes, inherited "die Nymphomanie ihrer Mutter".

¹³² Dessau 1.467; Syme, 432.

consul, and argues that the conspiracy took place in A.D. 1,¹³³ and that Julia was relegated on this occasion, and thereafter recalled and again relegated in A.D. 8. This is not inconsistent with the view which the *pater patriae* took of his majesty. Julia's first relegation would have been because of her involvement in her husband's conspiracy, rather than because of her infidelities, which means that she was guilty of a serious form of the *crimen maiestatis* proper. For this she was treated much more leniently than her mother, which perhaps shows that Augustus was disposed to use greater severity against the *crimen violatae maiestatis* than against the *crimen maiestatis imminutae*, even when the latter was directed against him in his official capacity. Subsequently, when Julia was exiled for her vices,¹³⁴ leniency was abandoned, for on this occasion the crime was that of 'violated majesty'; and, like her mother, she died in exile.

The reasons for Ovid's relegation to Tomi in A.D. 8 are obscure.¹³⁵ The poet himself speaks of "duo crimina, carmen et error"¹³⁶ (*Trist.* 2.207). The "carmen" which resulted in his being charged as "obscaeni doctor adulterii"¹³⁷ (*Trist.* 2.212) can probably be identified as his *Ars Amatoria*,¹³⁸ but

¹³³ Norwood (153) prefers A.D. 6. Syme (432) believes that part of Paullus' crime was connivance at his wife's adulteries, but there is no discernible objective which he hoped to achieve by his aberration.

¹³⁴ Scholiast ad Juvenal 6.158. Norwood (151) may be right to suggest that the Agrippa whom the Scholiast attests as having corrupted her was not her brother, Agrippa Postumus, but Herodes Agrippa.

¹³⁵ Norwood (154-9) believes that Julia and Agrippa Postumus were implicated in a plot against Augustus, and that Augustus, not wanting to let it be known that there was a plot in his own family, gave out that Postumus was mentally deranged, and trumped up the story of Julia's misconduct, using Silanus as a scapegoat. Ovid was a friend of Postumus and Julia, and learnt of matters which Augustus did not want made public, namely that the real reason for the punishment of Augustus' grandchildren was a plot. Ovid was exiled in order to keep him quiet. If this hypothesis is correct it in fact supports the postulated distinction between the *crimen maiestatis* and "*violata maiestas*". When it was not convenient to proceed with a prosecution for *maiestas* proper, 'violated majesty' was a suitable alternative expedient.

¹³⁶ Two crimes: a poem and a mistake. (tr.)

¹³⁷ A teacher of indecent adultery. (tr.)

¹³⁸ Dessau, 1. 469, 532: Volkmann, 185; Norwood, 150.

as this had been published eight years before it looks more like a pretext than an instant cause of complaint (cf. Dessau, 1.469; Syme, 468). Ovid cannot specify the 'error' without reopening a wound which it was bad enough to have inflicted on Augustus in the first place (*Trist.* 2.208-10), but insists that it had nothing to do with either external treason or conspiracy,¹³⁹ nor with verbal injury,¹⁴⁰ nor indeed with the contravention of any law: "Nec quicquam, quod lege veter committere, feci"¹⁴¹ (*Pont.* 2.9.71). Taken with Ovid's complaint that he was punished without trial,¹⁴² which means by the exercise of *coercitio* (Dessau, 1.469; Volkmann, 185), and with the fact that the *crimen maiestatis* was excluded where *mens rea* was absent (*Dig.* 48.4.7.3), the evidence suggests that in Ovid's view his offence fell outside the ambit of the public criminal law. Indeed he says so quite explicitly: "Illa dies veniet, mea qua lugubria ponam: causaque privata publica maior erit"¹⁴³ (*Trist.* 4.2.73-4). His crime had something to do with 'violated majesty', and in this regard it is significant that his appeal for clemency is addressed to Augustus in his specific capacity as *pater patriae*: "parce, pater patriae".¹⁴⁴ There is no information as to the nature of the 'error', except that it consisted in inadvertently seeing something which should not have been seen (*Trist.* 2.103-5; 3.5.49-50), and probably also in making known what he had seen (*Trist.* 3.5.51-2; 3.6.35). It has been reasonably assumed that his forbidden knowledge related to the adulteries of the younger Julia (Volkmann, 105; Dessau, 1.468). His offence was far removed from the *crimen maiestatis imminutae*, and was even too nebulous to be prosecuted in the imperial court as the *crimen violatae maiestatis*. This explains

¹³⁹"Qui nec contraria dicor arma, nec hostiles esse secutus opes" (*Trist.* 2.51-2); "Cum poenae non sit causa cruenta mea" (*Trist.* 3.5.44).

¹⁴⁰"Non aliquid dixi, violentaque lingua locuta est, lapsaque sunt nimio verba profana mero" (*Trist.* 3.5.47-8).

¹⁴¹ I did nothing that I was forbidden to do by law. (tr.)

¹⁴²"Nec mea decreto damnasti facta senatus, nec mea selecto iudice iussa fuga est" (*Trist.* 2.131-2).

¹⁴³ The day will come when my complaints will cease, and the public cause will be greater than a private case. (tr.)

¹⁴⁴ Forgive me, father of our country. (tr.). *Trist.* 2.181; cf. *Trist.* 2.39; 2.574; 4.4.13-14; *Pont.* 1.1.36.

why he was dealt with extra-judicially, and why his punishment was comparatively lenient, in that he was left in full possession of his property (*Trist.* 2.137-8). But as lenient as the *pater patriae* might be, his majesty weighed heavily on his 'children'.¹⁴⁵ The concept which, under the relatively stable regime of Augustus, was employed with moderation and a minimum of injustice, was fundamentally a dangerous notion, and lent itself only too readily to the abusive extensions which characterized the *crimen violatae maiestatis*, as it was steadily brought closer to the *crimen maiestatis imminutae* under his successors.

¹⁴⁵ Cf. Ovid, *Pont.* 2.8.29-30: "perque tori sociam . . . cui maiestas non onerosa tua est".

“De Famosis Libellis”

“(Apud veteres) facta arguebantur, dicta impune erant. Primus Augustus cognitionem de famosis libellis specie legis eius (sc. maiestatis) tractavit, commotus Casii Severi libidine, qua viros feminasque inlustres procacibus scriptis diffamaverat”¹ (Tac. Ann. 1.72.3-4). Tacitus’ criticism should be evaluated by investigating the extent to which the *crimen maiestatis* was used as an instrument for the suppression of freedom of speech, both in the Republic and under Augustus.

In 206 B.C. the poet Naevius was imprisoned for his slanders and abuse of prominent men, ‘after the fashion of the Greek poets’ (Gell. 3.3.15). The poet is supposed to have said “fato Metelli Romae fiunt consules”,² and so to have levelled an insult by name—“de Graecorum poetarum more”—against Q. Metellus, consul in 206 B.C.³ Naevius also insulted Scipio Africanus, alleging that the father of the great general had once forcibly led him away from his mistress in a state of undress (Gell. 7.8.5). Fraenkel (*RE* Supp. 6.623; contra Mattingly, 417) takes this as another example of *nominatio*, an attack on a named person. The existence of a sanction for criminal defamation in Naevius’ day depends on the meaning of Cicero (*Rep.* IV, *ap.* Augustine, *Civ. Dei* 2.9), who has Scipio comment on Attic Old Comedy’s freedom *ὄνομαστί κωμωδεῖν* as follows:

¹ In olden times deeds were prosecuted but words went unpunished. Augustus was the first to hold an investigation, under the guise of the *maiestas* law, into defamatory writings. He was led to this by the excesses of Cassius Severus, whose impudent writings had defamed distinguished men and women. (tr.)

² The Metelli are fated to be consuls at Rome. (tr.)

³ Ps-Ascon. ad Cic. *Verr.* 1.10.29. Fraenkel (*RE* Supp. 6.623) and Mattingly (415) accept Naevian authorship of the verse. Fraenkel (*RE* Supp. 6.623-4) also accepts the historicity of Q. Metellus’ reply: “dabunt malum Metelli Naevio poetae” (The Metelli will punish Naevius the poet) (Ps-Ascon. loc. cit.); but Mattingly (420-1) regards it as spurious.

"Nostrae, inquit, contra duodecim tabulae cum perpaucae res capite sanxissent, in his hanc quoque sanciendam putaverunt, si quis occentavisset sive carmen condidisset, quod infamiam faceret flagitiumve alteri."⁴ Despite the attempts which have been made to restrict this passage to a sanction against magic spells and incantations,⁵ the better view is that Cicero means a capital sanction against the publication of defamatory verses.⁶ The question is whether this provision was used against Naevius. Gellius (3.3.15) says that while in prison he composed his *Hariolus* and *Leon*, thereby purging the injuries which he had previously inflicted; the tribunes therefore released him. If the tribunes interceded for this reason, and not because his imprisonment was unlawful, weight is lent to the view⁷ that his punishment was an exercise of *coercitio*. But there is a tradition that Naevius was exiled, for Jerome⁸ says that he died at Utica, after having been driven from Rome by a group of nobles led by Metellus. This suggests voluntary exile to avoid condemnation.

The next appearance of defamation in the criminal law is linked to a corrupt passage in Cicero (*Fam.* 3.11.2). Congratulating Appius Claudius on his acquittal of *maiestas*, Cicero says: "De ambitu vero quid interest, inquis, an de maiestate? Ad rem nihil: alterum enim non attigisti, alteram auxisti. †Verum tamen est maiestas etsi Sulla voluit ne in quemvis impune declamari liceret: ambitus vero ita apertam vim habet ut aut accusetur improbe aut defendatur."⁹

⁴ Our XII Tables, on the other hand, provided a capital sanction in a few cases, including the singing of a lampoon or composition of a poem which brought another into disrepute or disgrace. (tr.) Cf. Cic. *Tusc.* 4.4: "duodecim tabulae declarant condi iam tum solitum esse carmen: quod ne liceret fieri ad alterius iniuriam lege sanxerunt"; Hor. *Sat.* 2.1.82-3: "si mala condiderit in quem quis carmina, ius est iudiciumque."

⁵ Strachan-Davidson, 1.107.3; Buckland, 325; Mattingly, 417.13.

⁶ Fraenkel, *Review of Beckmann—passim*; Jolowicz, 175 and n.1; Momigliano, *Review of Robinson* 121-3; Smith, 169-70; Daube, 25. Fraenkel does not sufficiently stress a strong argument in his favour, namely that Cicero's purpose is to contrast the provision in the XII Tables with the free political satire of Greek comedy.

⁷ Girard, *Organisation* 256-7; cf. Smith, 170; Mattingly, 419.

⁸ a.Abr. 1805 = 201 B.C. On the chronological difficulty see Fraenkel, *RE Supp.* 6.625 and Mattingly, 422-3.

⁹ You ask what difference there is between a charge of *ambitus* and one of

The general sense is that there is no difference between *maiestas* and *ambitus ad rem*, which cannot mean 'in one sense' (as suggested by Smith, 176), for in the context the similarity of the two crimes is considered in relation to the specific charges against Appius. There was no difference *as far as he was concerned*, for he was innocent of both. It then occurs to Cicero that there *is* a difference, which could have prejudiced Appius. Despite *alteram auxisti*, a conviction had been possible because . . . (?). On the other hand, the scope of *ambitus* was so clear that a man's guilt or innocence could be predicted in advance. The lack of similar clarity in the case of *maiestas* had provoked Sullan legislation which had something to do with people being 'declaimed against'. The answer to the crux seems to lie in a rule designed to obviate the disadvantage of being charged with *maiestas*.

Some of the proposed emendations are violent: "ea est maiestatis vis, et sic involuta, ut in quemvis impune declamare liceat" (Fröhlich, *RE* 4.1562); "verumtamen est maiestas (etsi Sulla voluit ne in quemvis impune declamari liceret) ambigua" (Glynn Williams, 232); "verumtamen ea est maiestas (etsi Sulla noluit) ut in quemvis impune declamari liceret" (Tyrell and Purser, 213). Kübler's reading (547) is: "est maiestas (et sic Sulla voluit) ne in quemvis declamari liceret" [*italics mine*]. A. H. McDonald (cited by Smith, 176.3) suggests: "*varia* tamen est maiestas etsi Sulla voluit ne in quemvis impune declamari liceret" [*italics mine*]. This emends only a single word, and gives the desired contrast between the uncertainty of *maiestas* and the *aperta vis* of *ambitus*.

The crisp question is: What was it that Sulla did or did not intend? The answer depends on *in quemvis declamari*, which is taken by Greenidge (*Treason* 235 n. 'b') to mean the publication of defamatory statements, and by Smith (176) as referring to a punishment for bringing a prosecution not falling under Sulla's *maiestas* law. On Greenidge's view, Sulla introduced a substantive rule prohibiting defamation, while

maiestas. None at all, in fact: for you had nothing to do with *ambitus*, and you increased *maiestas*. (The *crux* follows). But the scope of *ambitus* is so clear that either the accuser or the accused should know that he has no case. (tr.)

Smith's interpretation implies a procedural rule. At first sight the *lex Remmia* is against Smith. This law, which is first attested by Cicero (*Sex. Rosc.* 19.55), punished *calumnia*, which was an intentional prosecution on false grounds (Schol. ad Cic. loc. cit.; *Dig.* 48.16.1.1-5; 22.5.13). No special charge was brought. The procedure was that the court, when acquitting the accused, punished the accuser (Ascon. 29C). The law is dated between 149 B.C. and Sulla^{9a} or before 80 B.C.^{9b} On either view it was in force when Sextus Roscius was tried in 80. There is no suggestion that it was not of general application,¹⁰ but on Smith's view it would follow that Sulla made special provision for *calumnia* in *maiestas* cases. Greenidge's opinion is open to the more serious criticism that a substantive ban on defamation seems to have nothing to do with the 'variability' or lack of *aperta vis* of *maiestas*. It would be illogical for Cicero to have said: 'Maiestas is uncertain, although Sulla made defamation a form of the crime.'

It is possible, however, to support Smith by assuming that the very uncertainty of *maiestas* made the Remmian remedy ineffective. In the case of *ambitus*, on given facts the guilt or innocence of the accused was ascertainable in advance, and on an acquittal it would have been clear whether there should be a conviction for *calumnia*. But even on admitted facts a conviction for *maiestas* was not certain, for the outcome of *maiestatem auxi* versus *maiestatem minuisti* could not be known beforehand. A court acquitting on the ground of *maiestatem auxisti* could not say that the accuser had intentionally prosecuted on false grounds. For example, the accuser of A. Gabinius (pp. 76-7) could have had no reason to anticipate that unauthorized departure from a province would not be regarded as *maiestas*. The rule was: "Nemo damnatur nisi qui intellegit non recte se agere . . . calumnia enim in adfectu est"¹¹ (Gaius, 4.178). A *maiestas* jury could scarcely condemn an accuser under the *lex Remmia* for not having known what

^{9a}Mommsen, *Straf* 491f.

^{9b}Broughton, 2.13, 473.

¹⁰ Gaius, 4.178; *Dig.* 48.16.1. Cf. Mommsen, *Straf* 491-2 Greenidge, *Procedure* 468-9.

¹¹ No one can be condemned unless he realizes that he is acting improperly; *calumnia* depends on a state of mind. (tr.)

the jury itself had just discovered. The result was practically a white ticket for accusers, for nearly every charge of *calumnia* could be met with the answer: *varia tamen est maiestas*. Sulla therefore devised a special rule, giving those accused of *maiestas* the protection against malicious prosecution which the *lex Remmia* did not supply. It is proposed to adopt McDonald's *varia* and Kübler's *sic*, and to punctuate as follows: "Varia tamen est maiestas: et sic¹² Sulla voluit ne in quemvis impune declamari liceret." This gives the desired contrast: because of the variability of *maiestas*, Sulla introduced a special rule against *maiestas* prosecutions without good cause; but as for *ambitus*, its scope is quite clear, so that the ordinary rule of the *lex Remmia* suffices.

The evidence so far considered does not assist greatly in refuting Tacitus' "(apud veteres) facta arguebantur, dicta impune erant" (*Ann.* 1.72.3). The ill-tempered remark of Claudia (p. 28) was *maiestas*, but it was not a case of criminal defamation. Smith (177) suggests that, independently of anything in Sulla's *maiestas* law, defamation, as a form of *iniuria*, could lead to a *maiestas* charge if directed at a magistrate: "Iniuriam fecisti, sed quia magistratui, maiestatis actio est"¹³ (*Quint. Inst. Orat.* 5.10.39). But this suggestion overlooks the import of Tacitus' criticism that Augustus associated defamation and *maiestas* because Cassius Severus had defamed 'distinguished men and women' (*Ann.* 1.72.4). Given the existence of magisterial *maiestas*, there is nothing un-Republican in the proposition that any attack on a magistrate's dignity was a mediate diminution of *maiestas populi Romani*. But Tacitus does not mean *iniuria magistratui facta*. His point is that injuries to "viros feminasque inlustres" [*italics mine*] became *maiestas*. The inclusion of women excludes magisterial *maiestas*, and suggests an un-Republican innovation.

For the Caesarian period there is some evidence to support Carcopino's opinion (*Cicero* 2.390) that Caesar as dictator suppressed writings which displeased him, condemned the

¹² 'Sic' in the sense of 'under these circumstances, accordingly, hence' is attested, although rare. See Lewis and Short, 1690 s.v. 'sic'.

¹³ You have committed a wrong and because it was to a magistrate a charge of *maiestas* is competent. (tr.)

authors to exile, and organized a police system to maintain his grip on public opinion. But there is nothing to suggest that Caesar's conditioning policy involved the inclusion of defamation under the *crimen maiestatis*. His quarrels with Calvus and Catullus, as a result of their libellous verses, did not, as far as can be determined, lead to criminal proceedings, and indeed Suetonius (*Caes.* 75.5) attests his liberal attitude towards insults, citing in particular his condonation of the libels of M. Voltacilius Pitholaus and A. Caecina. Pitholaus produced the pungent comment on the appointment of Caninius Rabilus as consul for a day: "Ante flamines nunc consules diales fiunt"¹⁴ (*Macrob. Sat.* 2.2.13). If this was not punished it is difficult to fault Suetonius' assertion of Caesar's liberal attitude. Caecina published *Querellae* which were probably seditious (*Carcopino, Cicero* 2.413), but his exile after Thapsus was probably due to his service under Cato in Africa (*Bell. Af.* 89.5), rather than to his writings, despite his own assertion to the contrary: "Meus error exsilio corrigitur: cuius summa criminis est, quod armatus adversario male dixi"¹⁵ (*Cic. Fam.* 6.7.1). It is true that Suetonius (*Caes.* 75.5), by saying that Caesar preferred to discourage libels rather than to punish them, implies that punishment was a possible alternative (*cf. Carcopino, Cicero* 2.413), but there is no reason to believe that the crime involved in attacks on Caesar was other than the type of *maiestas* which consisted in *iniuria magistratui facta*.

As in the case of Caesar, there is some evidence that Augustus was tolerant of personal attacks. He did not react strongly to *famosi libelli* posted against him in the Senate (*Suet. Aug.* 55), confined himself to replying by edict to insulting jokes circulating about him (*Suet. Aug.* 56.1), vetoed a law which prohibited freedom of expression in wills (*Suet. Aug.* 56), and did not press a charge "quod male opinari de Caesare soleret"¹⁶ against Aemilius Aelianus Cordubensis, but confined himself to the threat of retaliation in kind (*Suet.*

¹⁴ Formerly priests were appointed to serve Jupiter, now consuls are. (tr.)

¹⁵ My mistake was corrected by exile: the substance of my offence was that during the war I spoke abusively of my enemy. (tr.)

¹⁶ Of having expressed an unfavourable opinion of Caesar. (tr.)

Aug. 51). When Tiberius complained of his leniency, his advice was: "Noli in hac re . . . nimium indignari, quemquam esse, qui de me male loquatur. Satis est enim si hoc habemus, ne quis nobis male facere possit"¹⁷ (*Suet. Aug.* 51). Seneca was able to say that under Augustus men's words did not endanger their lives, although they did cause them some trouble (*Ben.* 3.27.1). Even Tacitus (*Ann.* 4.34.8) was able to make a favourable estimate of the attitude of Caesar and Augustus to insults, as against that of Tiberius.

Horace (*Sat.* 2.1.18-20) seems to imply some inhibition of freedom of speech: "nisi dextro tempore Flacci verba per attentam non ibunt Caesaris aurem; cui male si palpere, recalcitrat undique tutus."¹⁸ But this need mean no more than Octavian's protection of his tribunician sacrosanctity. In the same poem (*Sat.* 2.1.82-3) Horace is warned by Trebatius that the composition of satires may bring him into conflict with the law: "si mala condiderit in quem quis carmina, ius est iudiciumque".¹⁹ This passage has been understood as a reference to the sanction against defamation in the XII Tables (Fraenkel, *Review of Beckman* 195), and as an allusion to Sulla's *lex de iniuriis* (Smith, 178), but it is not certain that Horace intends a serious reference to any law. In the same satire (2.1.7-9) he has Trebatius advocate a remedy for insomnia, in language similarly reminiscent of an ancient statute: "ter uncti transnanto Tiberim, somno quibus est opus alto, irriguumque mero sub noctem corpus habento."²⁰ This is surely on a par with Cicero's parodies of Trebatius' legal pedantry.²¹ And Horace's reply to Trebatius' warning suggests that his sole purpose is to lead up to a witticism: "Esto, si quis mala: sed bona si quis iudice condiderit laudatus Caesare?"²²

Suetonius (*Aug.* 51) notes with approval that Iunius Novatus escaped with a fine after publishing a serious defa-

¹⁷ Do not take it to heart if someone speaks evil of me. We should be satisfied if we can prevent people from doing evil to us. (tr.)

¹⁸ Only at an opportune moment will Caesar's ear be receptive to my words; handle him clumsily and he kicks back, on the alert in every direction. (tr.)

¹⁹ If anyone composes bad verses against another there is a legal right and an action. (tr.)

²⁰ Let those who cannot sleep oil themselves and swim across the Tiber three times; and at nightfall let them soak themselves in wine. (tr.)

mation—*asperrimam epistulam*—of Augustus, under the name of Agrippa Postumus. The charge may have been based on the *senatusconsultum* attested by Suetonius (*Aug.* 55): "Censuit (sc. Augustus) cognoscendum . . . de iis qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine ederent"²³ (PASSAGE A). A similar rule is stated in more general terms by Ulpian (*Dig.* 47.10.5.9): "Si quis librum ad infamiam alicuius pertinentem scripserit composuerit ediderit dolove malo fecerit quo quid eorum fieret, etiamsi alterius nomine ediderit vel sine nomine, uti de ea re agere liceret, et si condemnatus sit qui id fecit, intestabilis ex lege esse iubetur"²⁴ (PASSAGE B). Ulpian (*Dig.* 47.10.5.10) then mentions a *senatusconsultum* which apparently extended the law: "Eadem poena ex senatus consulto tenetur etiam is, qui 'epigrammata' aliudve quid sine scriptura in notam aliquorum produxerit: item qui emendum vendendumve curaverit"²⁵ (PASSAGE C). Elsewhere (*Dig.* 28.1.18.1) Ulpian says: "Si quis ob carmen famosum damnetur, senatus consulto expressum est, ut intestabilis sit"²⁶ (PASSAGE D). The same topic is discussed by Paul (*Sent.* 5.4.15), who says: "Qui carmen famosum in iniuriam alicuius vel alia quaelibet

²¹ "Tantum moneo neque amicitiae confirmandae clarissimi ac liberalissimi viri neque uberioris provinciae neque aetatis magis idoneum tempus, si hoc amiseris, te esse ullum umquam reperturum: hoc, quemadmodum vos scribere soletis in vestris libris, idem Q. Cornelio videbatur" (*Cic. Fam.* 7.17); "Sed tu in ista epistula nihil mihi scripsisti de tuis rebus, quae mehercule mihi non minori curae sunt quam meae. valde metuo ne frigeas in hibernis: quam ob rem camino luculento utendum censeo (idem Mucio et Manilio placebat) praesertim qui sagis non abundares" (*Cic. Fam.* 7.10).

²² Fair enough, if the verses are bad. But what if they are good, and meet with Caesar's approval? (tr.)

²³ Augustus proposed that action be taken against those who, under a pseudonym, published pamphlets or verses defamatory of anyone. (tr.)

²⁴ Whoever writes, composes or publishes a book defamatory of anyone, or with wrongful intent causes same to be done, even if he publishes under a pseudonym or anonymously, (falls to be dealt with under . . . ?); the statute provides that if condemned he is disqualified from being a witness. (tr.)

²⁵ The same penalty, under a decree of the Senate, is imposed on one who publishes epigrams or any other unwritten matter defamatory of any person. The same applies to one who causes such matter to be bought or sold. (tr.)

²⁶ If anyone is condemned for defamatory verses it is provided by decree of the Senate that he be disqualified from being a witness. (tr.)

cantica, quo agnosci possit, composuerit, ex auctoritate amplissimi ordinis in insulam deportatur: interest enim publicae disciplinae opinionem uniuscuiusque a turpi carminis infamia vindicare"²⁷ (PASSAGE E). Paul also says (*Sent.* 5.4.17): "In eos auctores, qui famosos libellos in contumeliam alterius proposuerint, extra ordinem usque ad relegationem insulae vindicatur"²⁸ (PASSAGE F). Paul says further (*Dig.* 47.10.6): "Quod senatus consultum necessarium est cum nomen adiectum non est eius, in quem factum est: tunc ei, quia difficilis probatio est, voluit senatus publica quaestione rem vindicari"²⁹ (PASSAGE G).

Levy (*Paul* 286-7) believes that E refers to the same decree as G, arguing that *quo agnosci possit* in E refers to the same rule regarding an unnamed victim as *cum nomen adiectum non est eius in quem factum est* in G. Although E attests deportation, and G intestability, they can be reconciled if Levy (*Paul* 286) rightly postulates that *in insulam deportatur* in E is a later addition to Paul's original text. Levy (*Paul* 286) emends B as follows: "si quis . . . sine nomine, <senatus consulto cautum est> uti de ea re <ex lege> agere liceret et . . . intestabilis [ex lege] esse iubetur." The decree attested by this reading is then identified by Levy (*Paul* 286) with E and G. His argument then is (*Paul* 287; cf. Schulz, *Classical Law* 598) that the *lex Cornelia de iniuriis* applied only to real injuries (*Dig.* 47.10.5pr). The Senate extended the *lex*³⁰ to

²⁷ Whoever composes defamatory verses to the prejudice of another, or any other song by which he can be recognized, is, on the authority of the Senate, deported to an island; it is in the public interest to protect the reputation of everyone from the dishonour of base verses. (tr.)

²⁸ Authors who publish defamatory pamphlets insulting to another are dealt with outside the regular process and sentenced to relegation to an island. (tr.)

²⁹ This decree of the Senate is necessary when the name of the person defamed is not specified in the publication. The Senate decided that in such a case, because of the difficulty of proof, his rights should be enforced in a public court. (tr.)

³⁰ That is, the *lex Cornelia de iniuriis*. Cf. Smith, 173. Mommsen (*Straf* 800.3), who holds that it means the XII Tables, and Maschke (cited by Momigliano, 123), who believes that the *lex Cornelia maiestatis* is meant, fail to notice that *Digest* 47.10.5, where B appears, names the *lex Cornelia de iniuriis* eight times, clearly implies it four other times, and nowhere refers to any other *lex*.

carmina famosa, and so subjected them to a criminal *quaestio*, as well as to a *iudicium privatum* under the Edict, and at the same time introduced instability as a new penalty, and provided for the anonymous wrongdoer and the unnamed victim. Finally, Levy (*Paul* 287) surmises that *in insulam deportatur* found its way into the text of E by contamination of two matters discussed by Paul in succession, namely the decree extending the *lex Cornelia* to *carmina famosa*, and the association of defamation and *maiestas* attested by Tacitus (*Ann.* 1.72.3-4).

Smith (173) criticizes Levy's emendation of B, arguing that there is no sign of the lacuna for which Levy supplies "<senatus consulto cautum est>". Smith's reading, incorporating part of *Digest* 47.10.5.8, and re-punctuating, is: "Sed Sabinus in adessorio etiam praetores exemplum legis secuturos ait: et ita res se habet: si quis librum . . . ediderit . . . sine nomine, uti de ea re agere liceret . . . iubetur." This reading may well, as Smith contends, supply "ita res se habet" as the required antecedent to "uti . . . liceret", although the change of tense is awkward. It also preserves the reference in the text to a *lex* which dealt with *libri*. This forms the basis of Smith's hypothesis (174, 176) that *libri* were dealt with by the *lex Cornelia* itself, and that a *senatusconsultum* extended the law to *libelli* and *carmina*. The argument is that *carmen*, *libellus*, and *liber* were not interchangeable. *Librum* in B should be restricted to longer written compositions, as against *libelli*, which were short writings capable of transmission by word of mouth, and *carmina*, which were meant to be sung or spoken, even if reduced to writing for propagation.

Smith's denial of interchangeability to *libri* and *libelli* is not persuasive. "Libellos aut carmina" in A suggests a distinction between written defamation of all kinds on the one hand, and oral defamation on the other; but not a subdivision of the written forms. And as far as the excerpts from Ulpian are concerned, if *librum* in B is restrictively interpreted, and if C and D are confined to *carmina*, there is no mention of *libelli* at all. Conversely, Paul (E and F) does not mention *libri*. Furthermore, the *famosi libelli* of Cassius Severus (*Tac. Ann.* 1.72.4) must have been the same type of publication as the *libri* of T. Labienus (*Sen. Controv.* 10 Praef. 5). And the

title "de iniuriis et famosis libellis" (*Dig.* 47.10) suggests that *libelli* had a general meaning.

It is difficult to avoid the impression that a *senatusconsultum* lurks somewhere in B, as Levy believes. In B itself "etiamsi . . . sine nomine" looks like a later addition to the original provision "si quis . . . fieret", and, in the light of Daube's analysis (8-23, 90) of the use of *licere* in legislation, it is doubtful if "uti . . . liceret" is statutory. And "ex senatus consulto tenetur *etiam* is" [italics mine] in C suggests that a *senatusconsultum* was also discussed in B. Perhaps the strongest proof is furnished by "quod senatus consultum" in G. These words (*Dig.* 47.10.6) cannot refer solely to the provisions attested in *Digest* 47.10.5.10-11, but follow logically on *Digest* 47.10.5.9, that is, B. The most serious criticism of Smith is that his hypothesis drives him to an unreasonable expedient. Faced with the Augustan *senatusconsultum* against defamation "sub alieno nomine" (A), and with the inclusion, on his theory, of a similar rule against written defamation "alterius nomine" in the *lex Cornelia* (B), Smith (179) unconvincingly proposes that the purpose of the Augustan decree was not to create a new rule, but merely to provide machinery for the detection of anonymous authors; by putting the onus on the Senate, Augustus avoided the odium of being the inquisitor himself.

It is significant that the special case of anonymous and pseudonymous defamation is limited by Ulpian (B) to publication (*ediderit*), while the general case applies to composition and publication (*scripserit composuerit ediderit*). There is a similar limitation in the Augustan *senatusconsultum*: "qui sub alieno nomine ederent" (A). It is probable that, at least to the extent of "etiamsi . . . sine nomine", Ulpian (B) is referring to a *senatusconsultum*, and therefore to that which was procured by Augustus. In so far, therefore, as the anonymous or pseudonymous publication of written defamatory matter is concerned, it is postulated that there was only one piece of legislation, the Augustan *senatusconsultum*. But there was also a decree which dealt with oral defamation (A, C, D, and E). According to Suetonius (A), it did not introduce a general rule for oral defamation, but a special rule dealing with anonymous publication in both the written and the oral forms.

This suggests that the general case of oral defamation had been previously introduced, and in the absence of evidence of another source it seems reasonable to assign it to the *lex Cornelia*. It is therefore proposed to accept Smith's hypothesis that the *lex Cornelia* dealt with *libri*, subject to the amplification that it also dealt with *libelli* and *carmina*, and to the restriction that for all three types it dealt only with the general case of composition and publication. The special cases of the anonymous or pseudonymous publisher, and the unnamed victim, were introduced by the *senatusconsultum* which was carried on the initiative of Augustus.

Cassius Severus was probably the most able orator of his day, although inclined to spoil a case by virulence.³¹ He appeared in a number of criminal cases, but with little success either as accuser or defender (Macrob. *Sat.* 2.4.9), and was often in trouble because of his outspokenness. He was brought before the praetor for inciting his advocates to a *convicium* against L. Varus Epicurius, a friend of Augustus, but parried the charge with the neat "nescio, inquit, qui conviciati sint, et puto Stoicos fuisse"³² (Quint. *Inst. Orat.* 6.3.78). Although Quintilian (loc. cit.) describes this case as a *crimen*, it was a civil action if, as Volkmann (207) believes, it was based on that provision of the Edict which is attested in *Digest* 47.10.15.2.³³ But there seems to be a clear reference to Sulla's law in the charge which Cassius brought against Cestius Pius: "Postulavi ut praetor nomen eius reciperet lege inscripti malificii."³⁴

When Asprenas Nonius, a close friend of Augustus, was prosecuted by Cassius on a charge of poisoning, Augustus attended the trial with the Senate's approval, but took no part in the proceedings (Suet. *Aug.* 56). This case may have had a sequel of importance to the circumstances under which

³¹ Tac. *Dial.* 19.1; 26.4; Sen. *Controv.* 3 Praef. 1-8; Quint. *Inst. Orat.* 10.1.116.

³² I don't know who did the reviling; I fancy it was the Stoics. (tr.)

³³ Cf. Quintilian's equally inaccurate "*maiestatis actio*" [italics mine] (*Inst. Orat.* 5.10.39).

³⁴ Sen. *Controv.* 3 Praef. 17. Mommsen (*Straf* 387 and n.1) holds that this means a crime not provided for in the laws, and assigns the case to "den parodischen Quästionen" of the Principate, but his view is opposed by Volkmann (203-4) and, to a certain extent, by Brzoska (*RE* 3.2010).

Augustus associated defamation and *maiestas*. The crucial passage is in Dio (55.4.3), who records, under the year 9 B.C., that Augustus stood by a friend who was accused, after having communicated his purpose to the Senate. Although Dio does not name the accused, his facts are strikingly similar to those in Asprenas' case, as attested by Suetonius. Dio adds that Augustus saved his friend. Although Suetonius does not give the outcome of Asprenas' trial, it is probable that there was an acquittal. Asprenas was defended by C. Asinius Pollio (Quint. *Inst. Orat.* 10.1.22), who died in A.D. 5 (Syme, 512.7), which means that Asprenas' trial was not later than A.D. 5. But Asprenas was suffect consul in A.D. 6 (Syme, 424.2), an office which he is not likely to have achieved if he already had a criminal record. Dio next records that Augustus was not only not angry with his friend's accuser (whom Dio does not name) because of his extreme outspokenness—*παρρησία*—but also acquitted him when he appeared before him *ἐδθυνόμενον ἐπὶ τοῖς τρόποις*.³⁵

The legal principle involved in an investigation *ἐπὶ τοῖς τρόποις* was that enunciated in the Edict: "Ait praetor: qui adversus bonos mores convicium cui fecisse . . . dicetur . . . in eum iudicium dabo"³⁶ (*Dig.* 47.10.15.2; cf. Volkmann, 207). Although *convicium* represents the *occentare* of the XII Tables (Kaser, 521.6; Jörs, 259), it can be taken as equivalent to the general term *iniuria verbis* (Mommsen, *Straf* 794.4). Volkmann (207), correctly assuming that the accused friend of Augustus, to whom Dio refers, was Asprenas, and therefore that the accuser was Cassius Severus, believes that the accused in the prosecution before Augustus *ἐπὶ τοῖς τρόποις* was Cassius, and that the charge against him arose out of his *παρρησία* at Asprenas' trial. The only difficulty is the last assumption. Dio says that no action was taken against Cassius as a result of his outspokenness against Asprenas, from which it seems to follow that the proceedings which were instituted *ἐπὶ τοῖς τρόποις* were brought on a subsequent occasion, which had nothing to do with Asprenas' trial. A

³⁵ For an enquiry into his moral conduct. (tr.)

³⁶ The praetor says: I will grant an action against one who is found to have insulted anyone to the prejudice of public morality. (tr.)

charge against Cassius which may be identified as the proceedings ἐπὶ τοῖς τρόποις is that which was brought by Paullus Fabius Maximus. Cassius addressed to Fabius the virulent remark: "quasi disertus es, quasi formosus es, quasi divus es: unum tantum es non quasi, vappa";³⁷ he was prosecuted for this, but acquitted (Sen. *Controv.* 2.4.11; 3. Praef. 5). A further clue is furnished by Dio (55.4.4) who, immediately after the acquittal of Cassius ἐπὶ τοῖς τρόποις, says: ἄλλους γε μὴν ἐπιβουλεύειν οἱ μηνυθέντας ἐκόλασε. When Dio uses ἐπιβουλεύειν he means the *crimen maiestatis* proper (p.229 n.99^a), so that his sense is: "Cassius Severus was acquitted of *convicium*. But others, who were alleged to have conspired against Augustus, were convicted of *maiestas*". It seems that Cassius was tried at a time when conspiracy was in the air. In Dio's context it also appears that the *convicium* of which Cassius was acquitted was analogous to τὸ ἐπιβουλεύειν, that is, the *crimen maiestatis* proper.

Cassius' trial for *convicium*, as attested by Dio (55.4.3), seems to be the *cognitio de famosis libellis* against him which Tacitus mentions (*Ann.* 1.72.4), for the charge of *convicium* was based on the *maiestas* law, and Tacitus' *cognitio* was also conducted *specie legis* (sc. *maiestatis*). But Cassius was acquitted of *convicium*, while it is widely assumed³⁸ that he was convicted as a result of Tacitus' *cognitio*. If so, the trial to which Dio refers was earlier than that of which Tacitus speaks, for the exile of Cassius to Crete *iudicio iurati senatus* (Tac. *Ann.* 4. 21.5) would have been on the occasion of his conviction by the *cognitio de famosis libellis*. There can be no suggestion that Cassius was allowed to return to Rome after his exile to Crete, thus making it possible to assume a later date for Dio's trial, for in A.D. 24 Cassius' punishment was increased to confiscation and interdiction, and he was relegated to the island of Seriphus (Tac. *Ann.* 4.21.5). This sentence was imposed because he had continued his slanderous activities while on Crete (Tac. loc. cit.), which implies continuous exile from the time of the relegation to Crete. If the chronology of

³⁷ You are eloquent in a way, handsome in a way, and godlike in a way; and a good-for-nothing in every way. (tr.)

³⁸ Mommsen, *Straf* 800.1; Brzoska, *RE* 3.1745; Kübler, 551; Lengle, *Straf* 62; Volkmann, 88; Syme, 487 and n.3; Anderson, 47; Kelly, 44.

Jerome (*ad a. Abr.* 2048 = A.D. 32) is correct,³⁹ Cassius died in A.D. 32, in the twenty-fifth year of his exile. This would date the relegation to Crete to circa A.D. 8.⁴⁰ But if Dio's trial was earlier than that of Tacitus, the latter is wrong when he says (*Ann.* 1.72.4) that the *cognitio* against Cassius was the first of its kind. Tacitus, however, does not say that Cassius was convicted, but only that Augustus "*cognitionem . . . tractavit*". This inconclusive expression rather suggests an acquittal, for it was not Tacitus' practice to fail to mention a condemnation for *maiestas*. Furthermore, Dio's trial was held in Augustus' imperial criminal court (Volkmann, 207 and n.4), and Tacitus' *cognitio* was probably in the same forum (Volkmann, 178). Indeed, it seems clear from "*Augustus . . . tractavit*" that there was an exercise of jurisdiction by Augustus personally. But the exile to Crete was decreed by the Senate (*Tac. Ann.* 4.21.5).

It may be possible to identify the occasion of Cassius' acquittal more accurately. Great popular unrest followed the famine and the fire of A.D. 6, with much seditious talk, and the posting of pamphlets by night: βιβλία νύκτωρ ἐξετίθεσαν (Dio, 55.27.1). One Publius Rufus⁴¹ was said to be the ring-leader, but it was believed that the real leaders were making use of his name, in furtherance of the revolt which they were planning: ἕτεροι δὲ τῷ ἐκείνου ὀνόματι καταχρώμενοι καινοτομεῖν ἐπιστεύοντο (Dio, 55.27.2). The Senate decreed an investigation, and offered rewards for information (Dio, 55.27.3). It is probable that the pamphlets posted by night were lampoons on Augustus, for famine had previously produced similar attacks on him. During the triumvirate, his dinner party to which the guests came dressed as gods and goddesses provoked the anonymous lampoon cited by Suetonius (*Aug.* 70); and criticism was particularly severe because there was a famine at the time: "*Auxit cenae rumore summa tunc*

³⁹ As is believed by Brzoska, *RE* 3.1746; Fitzler-Seeck, *RE* 10.372; Volkmann, 88.2.

⁴⁰ This date is accepted by Brzoska (*RE* 3.1746) and Volkmann (88.2). Fitzler-Seeck (*RE* 10.372), allowing a margin for error, prefer A.D. 6. Anderson (47) takes the date as A.D. 12.

⁴¹ Possibly the Plautius Rufus mentioned as a conspirator by Suetonius, *Aug.* 19.

in civitate penuria ac fames adclamatumque est postridie, omne frumentum deos comedissee et Caesarem esse plane Apollinem, sed Tortorem." (Suet. *Aug.* 70). It is probable that in A.D. 6 the use which the real ringleaders made of Rufus' name was to post pamphlets of a similar type, purporting to have been composed by Rufus.

It should be noticed that the *senatusconsultum* which extended the *lex Cornelia de iniuriis* to cases of anonymous and pseudonymous publication (pp. 256-7) included a provision which has not yet been discussed, namely the authorization of rewards to informers: "et ei, qui indicasset, sive liber sive servus sit, pro modo substantiae accusatae personae aestimatione iudicis praemium constituitur, servo forsitan et libertate praestanda" ⁴² (*Dig.* 47.10.5.11). Ulpian's comment on this provision is: "quid enim si publica utilitas ex hoc emergit?" ⁴³ (*Dig.* 47.10.5.11). In the result there is a striking correspondence between the *senatusconsultum* and the events of A.D. 6. In that year lampoons on Augustus were published *alterius nomine* (cf. PASSAGES A, B and E); the Senate decreed an investigation (cf. PASSAGES A and E, and Levy's reading of B); and the Senate offered rewards to informers (cf. *Dig.* 47.10.5.11). The lampoons in the name of Rufus were far more serious than mere *iniuriae*, for they were published in furtherance of a seditious conspiracy, so that there was a clear involvement of *publica utilitas* (cf. *Dig.* 47.10.5.11).

It was at this point, in A.D. 6, that the Senate extended the *lex Cornelia de iniuriis*, and did so in such a way as to associate defamation and *maiestas*. The *crimen maiestatis* already included any conspiracy "quo homines ad seditionem convocentur" (*Dig.* 48.4.1.1), and it was precisely in pursuance of such a conspiracy that the pamphlets in Rufus' name had been published. But although incitement to sedition was already *maiestas*, the *ipsissima verba* of the *maiestas* law did not cover the particular evil of the pamphlets. The Senate could have simply extended the *maiestas* law by decreeing that defamation *alterius nomine* would be deemed to be incitement

⁴² An informer, whether a free man or a slave, is given a reward fixed by the court according to the financial position of the accused; a slave should perhaps receive his freedom as well. (tr.)

⁴³ What of it, if it is in the public interest? (tr.)

to sedition. But then the new rule would have had to be restrictively phrased, so as to limit it to publication *ad infamiam principis*, for only in that case was it realistic to speak of sedition; a rule against publication *ad infamiam alicuius* could scarcely be associated with sedition. But *ad infamiam principis* in the *maiestas* law would have seriously undermined the fiction that the concept of *maiestas populi Romani* still survived.

The solution was an extension of the *lex Cornelia de iniuriis*, in which *ad infamiam alicuius* would not be out of place, while at the same time there would be no need in practice to apply the new rule except against attacks on the *princeps*. But while this would give the desired rule of substantive law, there was a procedural difficulty. The criminal action under the *lex Cornelia de iniuriis*⁴⁴ can fairly be described as *sui generis*. It was brought before a tribunal consisting of a quasi-magisterial president and a *consilium*, which assimilated it to a criminal trial; but it was known as an *actio*, and never as an *accusatio*, and was in fact "eine hinsichtlich der Bildung des Schwurgerichts modificirte Civilklage" (Mommsen, *Straf* 803, 804 and n.1; cf. 368). The plaintiff proposed a specified amount as damages, and if the court condemned it was bound to award precisely that amount; in addition, condemnation carried *infamia* (Mommsen, *Straf* 805). Two differences between this action and a prosecution before a *quaestio* are significant. Firstly, there was no general right of accusation, the action being available only to the injured party. It follows that there was no room for informers. Secondly, there could be no question of imposing any of the recognized criminal penalties, such as interdiction or confiscation. The *actio iniuriarum* did not, therefore, furnish a suitable means of bringing anonymous publication under the public criminal law. The *actio* could have been converted into a *crimen* by creating a *quaestio iniuriarum*, but there were probably two objections to this course. It would have meant the attachment of an outright criminal sanction to real injuries, with consequent disturbance of the system of honorary

⁴⁴ Known as *actio iniuriarum legis Corneliae*, as distinct from the purely civil action, *actio iniuriarum praetoria*. Mommsen, *Straf* 804.1.

law which had been built around *iniuria* as a civil delict. Furthermore, it was convenient not to remedy the position by creating a *crimen iniuriarum*, for the existing state of the law gave Augustus a convenient pretext for accomplishing, in an unobtrusive way, something which he was in any event determined to bring about—the punishment of attacks on him as *maiestas*. In order to bring criminal defamation under a *iudicium publicum*, a twofold procedure was followed. The category of verbal injury in the *lex Cornelia de iniuriis* was extended to *qui alterius nomine ediderit* by *senatusconsultum*, which gave the desired enlargement of the substantive law. But this left *iniuria*, even as extended, without a *quaestio perpetua* before which transgressors could be prosecuted. As it had been decided not to create a *quaestio de iniuriis*, jurisdiction had to be conferred on one of the existing *quaestiones*. The *quaestio maiestatis* was chosen for this purpose. The *senatusconsultum* therefore went on to provide that anyone composing or publishing defamatory matter was to be punished “ex lege maiestatis”, possibly in the form: “ut si quis librum . . . ad infamiam alicuius pertinentem scripserit . . . etiamsi alterius nomine ediderit vel sine nomine, ea poena teneatur, qua tenentur qui homines ad seditionem convocasse iudicati sunt.”⁴⁵ Although worded in the general form *ad infamiam alicuius*, in practice the rule could easily be confined to attacks on the *princeps* and his family.⁴⁶ It is probably the selection of the *quaestio maiestatis* for this purpose that Paulus has in mind when he says: “voluit senatus *publica quaestione* rem vindicari” (PASSAGE G; [italics mine]). A provision such as that suggested would have been no different in principle from that attested by Ulpian *Dig.* 47.22.2, whereby the Senate (*Dig.* 47.22.1.1) brought unlawful associations, for which there was no *quaestio*, under

⁴⁵ Whoever writes a book . . . defamatory of another . . . even if he publishes it under a pseudonym or anonymously, is liable for the same penalty as those who are held to have incited men to sedition. (tr.)

⁴⁶ If the Sosius who was charged with *maiestas* because “apud matronas disserebat liberos non esse tollendos” (Sen. *Suas.* 2.21) was the C. Sosius who was consul in 39 B.C. (Edward, 115), or 32 B.C. (Syme, 276, 278), his crime would not have been brought under the new rule; rather was it a general diminution of *maiestas populi Romani*, similar to the remark of Claudia (p. 28).

the *quaestio maiestatis*: "quisquis illicitum collegium usurpaverit, ea poena tenetur, qua tenentur, qui hominibus armatis loca publica vel templa occupasse iudicati sunt" (cf. *Dig.* 48.4.1.1: "locave occupentur vel templa"). Jurisdiction having been given to the *quaestio maiestatis*, there could be an assumption of that jurisdiction by the Senate and the imperial criminal court, which would have been impossible under the *actio iniuriarum*. It was also possible to introduce rewards for informers (*Dig.* 47.10.5.11), for the regular accusatory procedure now applied. Furthermore, a full-scale criminal penalty could be introduced, namely relegation (PASSAGE F; cf. PASSAGE E and Paul *Sent.* 5.4.16). The penalty was *extra ordinem*, as attested by PASSAGE F, precisely because the *actio iniuriarum legis Corneliae* had been abandoned, as far as criminal defamation was concerned.

It is therefore suggested that the *cognitio* against Cassius Severus (Tac. *Ann.* 1.72.4), which has been identified as the prosecution for *convicium* attested by Dio (55.4.3), was conducted in A.D. 6,⁴⁷ and was the first trial to be held under the *senatusconsultum* which was introduced as a result of the unrest that year, and which, in effect, brought defamation under the *crimen maiestatis*. Cassius was acquitted, but convictions were secured against the leaders of the conspiracy who had furthered their purpose by publishing lampoons in the name of Rufus. These leaders are the ἄλλους ἐπιβουλεύειν μνησθέντας to whom Dio (55.4.4) refers. It may be supposed that although Cassius had no part in the conspiracy, some of his many enemies denounced him when an investigation was held (Dio, 55.27.3) to determine the true author of the Rufian pamphlet. Although Cassius' record made him an obvious suspect, the evidence must have satisfied Augustus of his innocence.

But Cassius was an incorrigible slanderer (Tac. *Ann.* 4.21.5), and in or about A.D. 8 he was in trouble again, and was relegated to Crete under the *senatusconsultum*. It is

⁴⁷ Fitzler-Seeck (*RE* 10.372) suggest, although they put it forward only as a bald possibility, that Cassius was exiled during the disturbances of A.D. 6. But on the hypothesis developed in the text, this was not the occasion of his relegation.

possible that his offence on this occasion was connected with the proceedings against Titus Labienus, the son of Caesar's defecting lieutenant and an inveterate Pompeian (Kroll, *RE* 12.270; Syme, 486), whose virulence caused him to be known as "Rabienus" (Sen. *Controv.* 10. Praef. 5). His enemies contrived to have all his writings publicly burned, a punishment previously unknown (Sen. loc. cit.). This was probably linked to a *maiestas* charge against Labienus (Carcopino, *Cicero* 2.560.2), and the burning of the books was authorized by the Senate (Sen. *Controv.* 10. Praef. 8; Suet. *Calig.* 16.1). As Labienus' works went up in flames, Cassius remarked: "Nunc me, inquit, vivum uri oportet qui illos edidici" ⁴⁸ (Sen. *Calig.* 16.1). It is known that Cassius' works were burnt, also by decree of the Senate (Suet. *Calig.* 16.1), and it is probable that this took place soon after the destruction of Labienus' books. But then this general bonfire must be that attested by Dio (56.27.1), who reports that in A.D. 12 Augustus conducted an investigation into pamphlets which had been composed to the detriment of certain people, and had the offending works burned both in Rome and elsewhere, and punished some of the authors. These measures were clearly taken under the *senatusconsultum* of A.D. 6, with the possible exception of the book-burning, which may have formed the subject of a later addendum by the Senate. Dio's chronology is not consistent with the date of Cassius' exile to Crete as established by Jerome (p. 260), but the inconsistency does not seem to have any bearing on the general picture of the course of events.

⁴⁸ I should now be burnt alive, since I know those works by heart. (tr.)

“Ad Legem Iuliam Maiestatis”

Under the above heading *Digest* 48.4 sets out eleven excerpts from the works of seven classical jurists—Ulpian (48.4.1, 2, 11); Marcian (48.4.3, 5); Scaevola (48.4.4); Venuleius Saturninus (48.4.6); Modestinus (48.4.7); Papinian (48.4.8); and Hermogenian (48.4.9, 10). The same heading introduces the discussion of Paul (*Sent.* 5.29), and two collections of imperial constitutions (*Code Th.* 9.5; *Code J.* 9.8). A *lex Julia maiestatis* is also attested by *Institutes* 4.18.3 and, to judge by the misplaced excerpt in *Code J.* 9.8.6,¹ by Marcian (*De Publicis Iudiciis* I). Information about *maiestas* is, of course, ascertainable from many other juristic sources,² but without mention of a *lex Julia maiestatis*.

It has been widely assumed³ that the *lex Julia maiestatis* was some sort of consolidating statute which re-enacted the previous *maiestas* laws, with additions, and so went down

¹ On this passage see Mommsen-Krüger, 2.374.2; Volterra, 488-9.

² For example, *Digest* 3.2.11.3; 28.1.18.1; 47.10.5-6; 48.18.10.1; *Code J.* 1.49.1; 4.1.2; 8.11.10; 9.5.1; 9.42.3.4; 9.49.10.5, 11; 9.50.2; 11.9.4; *Code Th.* 9.11.1; 9.21.9; 10.21.3; 16.10.12.1; 15.1.31; Paul. *Sent.* 5.4.15-17; 5.21; *Collatio* 1.15.2; *Edictum Constanti de accusationibus*.

³ Rein, 515, 516 and n.; Zumpt, 2.2.475-6; Mommsen, *Straf* 541; Greenidge, *Treason* 235; Furneaux, 1.141; Pollack, 200, 204; Botsford, 455.9, 548; Strachan-Davidson, 2.156; Girard, *Leges* 321.1; Ciaceri, 251; McFayden, 219; Kübler, 548; Lengle, *Straf* 31; Rogers, *Trials* 6-7; Siber, *Analogie* 22; *Verfassung* 290; Arangio-Ruiz, 137; Grant, 413; Lear, 23; Chilton, 73. Cloud's paper on the *lex Julia maiestatis* did not become available until after the completion of the present study, but in any event the line of investigation which he pursues would not, it is felt, alter the conclusions reached here. See Cloud, J. D., 'The text of Digest XLVIII, 4: Ad Legem Iuliam Maiestatis', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)*, Vol. LXXX (1963), 206ff.

to the Principate as the sole statutory source of the crime, subject only to the extensions introduced from time to time by decrees of the Senate, imperial constitutions, and judicial interpretation. In view of the fact that the laws of both Caesar and Augustus are known as *leges Juliae*, and that a given *lex Julia* cannot be identified as having been introduced by Caesar or Augustus unless there is extraneous evidence pointing to a probability one way or the other,⁴ the authorities are divided mainly on the authorship of this consolidating statute. Some assign it entirely to Augustus,⁵ others to Caesar.⁶ It has also been suggested⁷ that the material in the texts is a composite commentary on statutes of both Caesar and Augustus; or that the definitive *maiestas* statute was made up of laws of Sulla and Augustus (Pollack, 199-200). There is also the courageous view that the *lex Julia maiestatis* was introduced by Tiberius.⁸

The strongest argument against a *lex* of Augustus is its omission from the literary sources which deal, although in the most scanty manner, with his legislation. Suetonius does not mention it in his brief résumé: "Leges retractavit et quasdam ex integro sanxit, ut sumptuariam et de adulteriis et de pudicitia, de ambitu, de maritandis ordinibus"⁹ (*Aug.* 34.1; cf. *Res Gestae* 2.12.14). Dio (54.12-18), reviewing the measures of 18 and 17 B.C., says nothing which can be interpreted as a reference to a *maiestas* law; his nearest approach to the subject is his assertion (54.18.1) that Augustus adopted Gaius and Lucius ἰν' ἡττον ἐπιβουλεύηται.¹⁰ It can be urged that Suetonius does not purport to give a complete list, and it

⁴ The only exception is Augustus' adultery law, for which there is internal juristic evidence: "haec lex lata est a divo Augusto" (This law was introduced by the emperor Augustus) (*Dig.* 48.5.1).

⁵ Zumpt, 2.2.476; Mommsen, *Straf* 541; Lengle, *Straf* 31; Botsford, 455.9; Furneaux, 1.141; Ciaceri, 251; Grant, 413; Lear, 23; Chilton, 73.

⁶ Rein, 516 n.; Greenidge, *Treason* 235; Arangio-Ruiz, 137; Bleicken, *Senatsgericht* 28 n.2.

⁷ See the authorities cited by: Rein, 516 n.; Zumpt, 2.2.475; Rotondi, 422, 453; Kübler, 548.

⁸ See the authorities cited by Rotondi, 453.

⁹ He revised the laws and introduced some new ones, such as those on expenses, adultery, bribery and marriage. (tr.)

¹⁰ To reduce the prospects of conspiracy. (tr.)

has been pointed out (Rein, 516 n.) that he also fails to notice Caesar's known *maiestas* law. The crisp question is, however, whether Suetonius omits from the résumé any other major laws known to have been introduced by Augustus. No reference point of absolute reliability is furnished by any Julian law, but a strong majority view regards Augustus as the author of the *leges Iuliae iudiciorum publicorum et privatorum* (p. 284 n.57). These laws are absent from the résumé, but the inference to be drawn from this fact is seriously weakened by Suetonius' mention of at least some of their provisions elsewhere (*Aug.* 32). Similarly, the *lex de collegiis*, which was Augustan (Arangio-Ruiz, 104-5), is not included in the résumé, but is noticed by Suetonius elsewhere (*Aug.* 32). The significance of this law is that it applied the penalty laid down for incitement to sedition (*Dig.* 47.22.2), that is, for a form of *maiestas*. It may therefore be argued that when Suetonius consulted this *lex*, his attention would have been drawn to the *maiestas* law. It would perhaps follow that if there had been anything to say about an Augustan *lex maiestatis*, Suetonius would have said it. Of the Julian criminal laws set out in the *Digest* (48.4, 5, 6, 7, 11, 12, 13, 14), those on adultery and *ambitus* are included in the résumé, and the extortion law was Caesarian (Zumpt, 2.2.294, 475; Mommsen, *Straf* 709). The authorship of the rest is too uncertain to base an inference on their omission by Suetonius, but at all events there is no certain case of the total failure by Suetonius to mention a law known to have been introduced by Augustus, and therefore some weight should be given to his omission of a *lex maiestatis*.

Mommsen (*Straf* 541 and n.3) infers an Augustan *maiestas* law from the statement which Tacitus (*Ann.* 4.34.2-3) attributes to Cremutius Cordus: "Verba mea, patres conscripti, arguuntur: adeo factorum innocens sum. sed neque haec in principem aut principis parentem quos lex maiestatis amplectitur."¹¹ Girard (*Leges* 321.1), assuming that Mommsen's (unspecified) reasoning is that "principem aut principis parentem" means Augustus and Caesar,¹² believes that the

¹¹ It is my words, gentlemen, that are attacked; so innocent am I of wrongful deeds. But my words were not aimed at the emperor or his father, who are included in the *maiestas* law. (tr.)

rule which Tacitus attests was introduced by a *senatusconsultum*. Arangio-Ruiz (137) takes Tacitus to refer to Caesar's *maiestas* law which, he believes, expressly named Caesar as the subject protected, the Senate having extended the protection to Augustus. But in view of the conclusion reached as to the *maiestas* of Caesar and the probable content of his law (Chapters 7 and 9), it is unlikely that he was the personal subject of the crime. Furthermore, the association of defamation and *maiestas* (Chapter 12) leaves no room for a Caesarian *senatusconsultum* as the instrument whereby *verba* were included in the crime. In addition, a law protecting a named person could not readily have been extended to another named person, or to *princeps* in general. It is also not certain that Augustus would have wanted to associate himself with Caesar so openly.¹³ The other possibility (Arangio-Ruiz, 137) is an Augustan *lex* or *senatusconsultum* which was retroactively extended to *divus Iulius*; but this means an equally inexpedient perpetuation of Caesar's memory.

The charge against Cordus, according to Tacitus (*Ann.* 4.34.1), was that in his *Annales* he had praised Brutus and described Cassius as the last of the Romans.¹⁴ This gives a basis for a *maiestas* charge without a Caesarian or Augustan law at all, for Ciaceri (296) holds that praise of an act punished by the *lex Pedia* was itself culpable, and it has already been suggested (pp. 171-2) that the *lex Pedia* was a *maiestas* law. But, against Ciaceri's view, Cordus' history was recited to and approved by Augustus (Suet. *Tib.* 61.3; Dio, 57.24.2),

¹² The rendering 'the emperor or the emperor's mother' (Church and Brodribb, 163) is one of the curiosities of classical scholarship.

¹³ On the effacement of Caesar's memory by Augustus, see Carcopino, *Cicero*, vol. 2—*passim*; cf. Syme, 317-8.

¹⁴ Cf. Suet. *Tib.* 61.3. Dio (57.24.3) says that a further allegation was that he had attacked the People and the Senate. Seneca (*ad Marc.* 1.22.4) does not mention the praise of Brutus and Cassius, but says that Sejanus was angry with him because of his outspokenness: this agrees with the fact that the accusers were clients of Sejanus (Tac. *Ann.* 4.34.2; Sen. loc. cit.) Marsh (*Tib.* 293; cf. Rogers, *Trials* 87) believes that the charge attested by Tacitus was a preliminary introduced to create bias, and would have been followed by more substantial allegations if Cordus had not committed suicide. Ciaceri (296; cf. Cichorius, *RE* 4.1703) says that the speech of Cordus is fictitious, although the trial is historic.

which tends to rebut Tacitus' suggestion (*Ann.* 4.34.1) that publication was still recent in A.D. 25. Although Cordus had not been particularly complimentary to Augustus he nevertheless found it possible to stay out of trouble until A.D. 25,^{14a} which rather suggests that, although his *verba* were *in Caesarem*, Augustus, who encouraged a Pompeian rather than a Caesarian tone in the literature of his age (Syme, 317-8), had not regarded them as *in se*. It follows that "neque (verba) in principem aut principis parentem" (*Tac. Ann.* 4.34.3) does not refer to Caesar at all. Cordus meant Augustus (*principis parens*) and Tiberius (*princeps*). It would indeed have been strange for Cordus, speaking in A.D. 25, to have used *princeps* to mean 'the previous emperor' rather than 'the present incumbent'. Tacitus (*Ann.* 4.34.1) describes the charge against Cordus as "novo ac tunc primum audito crimine",¹⁵ and in view of his similar language in the case of Cassius Severus (p. 246) it would seem that he is either deliberately inaccurate, or in fact means what he says, namely that both cases were unprecedented. The difference probably is that Cassius was charged with the composition of pamphlets defaming a named person, Augustus, while it was alleged against Cordus that his attack on Caesar was an injury to persons not named, Augustus and Tiberius. The accusers, for want of a better case,¹⁶ sought an extreme extension of the *quo agnosci possit* rule attested by Paul (E, p. 254). In reply Cordus said, in effect: '(My words may well have attacked Caesar) but they were not directed against Tiberius or Augustus.'

Tacitus (*Ann.* 4.34.3) therefore means that the *maiestas* law protected Augustus and Tiberius against verbal injury. But Augustus derived his protection from the *senatusconsultum* of A.D. 6 (pp. 252-65). There is no reason to assume any further legislation in his favour on the same subject, and it is suggested that the "*lex maiestatis*" to which Tacitus refers is that *senatusconsultum*. There may have been a supplementary

^{14a} Dio, 57.24.2f.; Suet. *Aug.* 35.

¹⁵ A new charge, first heard of on this occasion. (tr.)

¹⁶ Cf. Dio's assertion (57.24.2) that, as no charge of substance could be framed against Cordus, he was prosecuted for the history of Augustus which he had written long before, and had read to Augustus.

decree extending the protection to Tiberius, but it would not have been necessary, for the rule was stated in the general form *ad infamiam alicuius*. Dio (57.24.4) reports the burning of Cordus' writings in terms very similar to those in which he describes the burning of the works of Labienus and Cassius Severus (56.27.1); in particular, there is the identical mention that the burning in Rome was conducted by the aediles, and elsewhere by the magistrates of each place. It is probable that in both cases the burning was conducted under the same authority, namely the *senatusconsultum* of A.D. 6.

Arangio-Ruiz (136) believes that the best argument for an Augustan *maiestas* law is *Digest* 48.4.3 (Marcian): "Eadem lege (sc. lege Iulia maiestatis) tenetur et qui *iniussu principis* bellum gesserit dilectum habuerit exercitum comparaverit"¹⁷ [italics mine]. A similar rule is attested by Paul (*Sent.* 5.29.1): "Lege Iulia maiestatis tenetur is . . . qui(ve) *iniussu imperatoris* bellum gesserit dilectumve habuerit exercitum comparaverit . . ."¹⁸ [italics mine]. The words "*iniussu principis* (imperatoris)" have been described as an interpolation for "*iniussu populi Romani*" (Kübler, 550), and as incompatible with the Augustan constitution, although closer to reality than "*iniussu populi aut senatus*" in Marcian's day,¹⁹ but it should be noticed that Marcian is supported by Ulpian (*Dig.* 48.4.1.1): "quo (sc. maiestatis crimine) tenetur is, cuius opera dolo malo consilium initum erit, quo obsides *iniussu principis* intercederent".²⁰ According to Marcian, then, a *lex Julia maiestatis* prohibited levies and warfare *iniussu principis*, and according to Ulpian the same criterion applied to the execution of hostages. Of the material in *Digest* 48.4, the excerpts which purport to cite the text of a *lex Julia maiestatis* are 48.4.1-4 (Lear, 40), and perhaps 48.4.10, 11 as well (Greenidge, *Treason* 236; but see pp. 287-8). Of these, 48.4.11 is in any event

¹⁷ Whoever, without the authority of the emperor, wages war or holds a levy or raises an army is liable under the same law (the *lex Julia maiestatis*). (tr.)

¹⁸ Whoever, without the authority of the emperor, wages war or holds a levy or raises an army is liable under the *lex Julia maiestatis*. (tr.)

¹⁹ Rein, 517—second note; McFayden, 228; Arangio-Ruiz, 137.

²⁰ Whoever with wrongful intent forms a design to kill hostages without the authority of the emperor is liable to be charged with *maiestas*. (tr.)

adjectival, so that the substantive rules which *may* represent part of the text of a *lex Julia* are 48.4.1.1 (from "quo tenetur"); 48.4.2 (excluding "nam . . . enumeratur"); 48.4.3 (from "qui in bellis"); 48.4.4pr;²¹ and 48.4.10. The only references to the *princeps* in these passages are those of Marcian and Ulpian (p. 271). In all other instances the subject, where specified, is *populus Romanus* or *res publica*.²² For example, Ulpian (*Dig.* 48.4.1.1) prefaces the rule against the execution of hostages with a 'definition': "Maiestatis autem crimen illud est, quod adversus populum Romanum vel adversus securitatem eius committitur."²³ In the same passage Ulpian consistently refers to *populus Romanus* and *res publica*, including the significant *hostes populi Romani*.²⁴ In the context, the execution of hostages *iniussu principis* was an act directed *adversus populum Romanum*, and was therefore not a violation of the *princeps*' majesty, but a diminution of the *maiestas* of the Roman People. Similarly, Marcian (48.4.3) includes warfare and levies *iniussu principis* among various categories which he sets out to illustrate the proposition: "lex autem Julia maiestatis praecipit eum, qui maiestatem publicam laeserit, teneri";²⁵ he includes the case "qui(ve) imperium exercitumve populi Romani deseruerit".²⁶ It should not be

²¹ Although Schulz (*Legal Science* 175) doubts this passage.

²² Paul (*Sent.* 5.29.1), in his summary of acts falling under a *lex Julia maiestatis*, adds or substitutes *imperator* in several cases where *Digest* 48.4.1-4 has *populus Romanus* or *res publica*. For the full list see Lear (40-1), who describes this variation as "a significant shift from republican to imperial emphasis in Paulus". The variation should, however, be considered in the light of the probability that *Sententiae* is a post-classical anthology of Paul's writings, abounding in interpolations and 'modernizations'. See Levy, *Paul—passim*; Jolowicz, 476; Schulz, *Legal Science* 176.

²³ *Maiestas* is the crime which is committed against the Roman People or its security. (tr.) Beseler (164) deletes *vel adversus securitatem eius*, probably correctly. *Securitas populi Romani* first appeared under Galba and Otho (Instinsky, 26).

²⁴ There was a substitution of *hostes principis* when the oath of allegiance recognized a relationship analogous to, but not identical with, *maiestas populi Romani* (p. 224).

²⁵ The *lex Julia maiestatis* provides that one who injures public *maiestas* is liable. (tr.).

²⁶ Whoever abandons his command or an army of the Roman People. (tr.)

assumed that Ulpian and Marcian 'modernized' the text in some respects only, while ignoring other cases where 'improvements' would no doubt have been equally justified. If they had interfered at all, they would presumably have done so to an extent comparable to that attested by Paul's *Sententiae*.

It will be noticed that the provisions regarding the *princeps* are concerned with external relations, and consist of matters which presuppose a positive function with which the *princeps* was vested. The *populus Romanus*, as the subject of a *maiestas* law, played a passive or an active role, depending on the particular act in issue. An overt act against the State, such as incitement to sedition or the murder of a magistrate, was culpable not because it had been done without authority, but because it had been done at all.²⁷ But making war and raising levies were only relatively culpable, being valid if carried out under a prescribed authorization. It is only in this relative sphere that Ulpian and Marcian portray the *princeps* as the subject of a *lex Julia*, namely the sphere of external affairs. It is unnecessary for Arangio-Ruiz (137) to take *iniussu principis* as evidence of the substitution of the *princeps* as a corporation sole, for all that the provision indicates is the transfer of a particular executive jurisdiction from the *populus Romanus* to the *princeps*. In the Republic external relations were the province of People and Senate, and Sulla made it *maiestas* to do certain things *iniussu populi aut senatus*. If at some stage the power of authorization passed to the emperor, a new *lex maiestatis* was needed, but it did not have to be a 'general' *maiestas* law. It merely had to provide, within the framework of *maiestas populi Romani*, for the fact that a new agency had taken over the function of expressing the People's will in external affairs. The fact that the Senate was a joint agent with the *populus* in exercising this function under Sulla's law, did not mean any derogation from the principle that technical *maiestas* was vested exclusively in the

²⁷ The fact that the wrongdoer had acted under a *senatusconsultum ultimum* might save him if the *factio* which had procured the decree happened to be in control when his conduct came to be queried, but this keenly-contested 'higher legality' of which the Senate claimed to be the arbiter was something which operated in spite of, and not because of, the *maiestas* law.

People and its magistrates. There is no need to assume any different result when the *princeps* became such an agency.

It is suggested that *iniussu principis* in Ulpian and Marcian is probably an authentic citation from the *lex*, subject only to the qualification that, consistently with Augustus' general policy towards the Senate, the full expression in his law was *iniussu principis aut senatus*. It can be assumed that *aut senatus* was subsequently discarded, possibly by the classical jurists, but more probably by the compilers of the *Digest*, or their predecessors.²⁸ It remains to identify the *lex* which made Augustus a joint agency with the Senate in external affairs. The question is linked to the arbitration of war and peace which, according to Strabo (17.3.25, p. 840), was granted to Augustus at the inception of the Principate: πολέμου καὶ εἰρήνης κατέστη κύριος διὰ βίου. The contemporary evidence of Strabo is corroborated by Dio (53.15.5), who says that in 27 B.C. Augustus received the right to wage war and make peace. Mommsen²⁹ accepts Strabo, and holds that the power was conferred by the Augustan prototype of the *lex de imperio Vespasiani*. Täubler (179-83) infers from the renewal of the *maiestas* treaty with Mitylene in 25 B.C. that the role of the People was taken over by Augustus, with the Senate fulfilling a merely executory function. Täubler refuses, however, to deduce a general rule from this case. Perhaps the most pertinent argument against the grant of the exclusive power of war and peace to Augustus in 27 B.C. is advanced by Sattler³⁰ who holds that the non-participation of Augustus in the trial of M. Primus, except as a witness (p. 183), means that he had not been injured in his own sphere of competence, for otherwise he would have brought Primus before his own court. Sattler concludes that under the settlement of 27 B.C. Augustus became the arbiter of war and peace only in his own *provincia*, which seems to be a reasonable corollary to the division of provinces between Augustus and the Senate.

²⁸ For the view that many interpolations and changes attributed to the compilers should be credited to earlier editors, see van Warmelo, 510-13.

²⁹ *Staat*, 2.2.954. and n.2; 955 and n.1; cf. Premierstein, 181, 182 and nn.1 and 2.

³⁰ Sattler, 46; for other arguments see Sattler, loc. cit., and Atkinson, 454.

Marcian (*Dig.* 48.4.3; cf. Ulpian, 48.4.2), after citing the rule against levies and warfare *iniussu principis*, ascribes another rule to the same *lex Julia maiestatis*: "quive, cum ei in provincia successum esset, exercitum successori non tradidit".³¹ The evidence is, therefore, that the *lex*: (a) reserved matters of war and peace for the decision of the princeps; (b) made it an offence for a provincial governor not to hand over to his successor. It does not seem to have been noticed that there is a striking parallel to these rules in certain legislation which Dio (53.15.6) assigns to 27 B.C.: ἐκεῖνα δὲ ἐπὶ πᾶσιν ὁμοίως (pro-consuls, propraetors, and procurators—53.15.4) ἐνομοθετήθη μήτε καταλόγους σφᾶς ποιεῖσθαι μήτ' ἀργύριον ἔξω τοῦ τεταγμένου ἐσπράσσειν, εἰ μὴ ἦτοι ἡ βουλὴ ψηφίσαιτο ἢ ὁ αὐτοκράτωρ κελεύσειεν. ὅταν τέ τω ὁ διάδοχος ἔλθῃ ἐκ τοῦ ἔθνους αὐτίκα αὐτὸν ἐξορμαῖσθαι καὶ ἐν τῇ ἀνακομιδῇ μὴ ἐγχρονίζειν, ἀλλ' ἐντὸς τριῶν μηνῶν ἐπανιέναι.³² The only material differences between the rules assigned by Dio to 27 B.C., and those ascribed by Marcian to a *lex Julia maiestatis*, are that Dio states the rule as *iniussu senatus aut principis*, and omits the equivalent of Marcian's *qui bellum gesserit*. But elsewhere (53.17.5) Dio attests an arbitration of war and peace, which he also assigns to 27 B.C., and *aut senatus* may well be accurate (p. 274). It follows that in 27 B.C. rules were introduced which corresponded in all material respects to those which Marcian ascribes to a *lex Julia maiestatis*. Furthermore, these rules were part of the constitutional settlement of 27 B.C., which is generally accepted as having been established not only by *senatusconsultum*, but also by *lex*.³³ *Prima facie*, therefore, the law which introduced these provisions in 27 B.C. was a *lex maiestatis*, but the difficulty is that the authorities

³¹ Whoever, when a successor has been appointed to his province, does not hand over his army to his successor. (tr.)

³² The following rules were laid down for proconsuls, propraetors and procurators: they were not to raise levies, or money beyond the appointed amount, without a vote of the Senate or an order of the emperor; when a successor arrived the previous governor was to leave the province immediately and to complete his return journey to Rome within three months. (tr.)

³³ Dio, 53.12.1 Cf. Pelham, 83-6; Premerstein, 129, 230-1; Syme, 331; Wickert, *RE* 22.2.2272; Siber, *Verfassung* 270-1, 274, 280; Sattler, 37, 45-6.

consulted do not date the legislative activity of Augustus as early as 27 B.C.³⁴ Yet it is not clear why a *lex Iulia* in 27 B.C. is impossible. The selection of 18-17 B.C. for all the *leges Iuliae* seems to be based on Augustus' statement (*Res Gestae* 6) that he rejected a *cura legum morumque* in 19, 18, and 11 B.C., and introduced legislation under his tribunician power. But that legislation need not have gone beyond matters which would have fallen under the *cura* if he had accepted it, namely laws of a 'moral' nature. Indeed it is precisely to such laws that Suetonius (*Aug.* 34.1) confines his résumé, although he elsewhere mentions 'non-moral' laws (pp. 267-8). It may well be that the laws mentioned in the résumé should not be dated earlier than 19 B.C., but no such limitation need be imposed on other legislation. Sulla's *maiestas* law accompanied the establishment of a new provincial régime (pp. 75-6), and it is probable that Augustus likewise made the necessary adjustments in the *lex maiestatis* when the need arose, rather than at a much later date. Regardless of the nature of the *imperium* under which Augustus administered his *provincia* (pp. 208 and n.29), adjustments to the *maiestas* law were needed, for *iniussu populi aut senatus* was not appropriate in the provinces which were transferred to Augustus. Even if Augustus did not have the full tribunician power, including the power of initiating legislation, until 23 B.C.,³⁵ he could, as consul, have introduced a *lex Iulia* in 27 B.C. in the *comitia centuriata*, or a *lex*

³⁴ The entire series of *leges Iuliae* is assigned to 18-16 B.C. by Girard (*Leges* 304-7) although he says (300) that Augustus began his legislative programme after 27 B.C.; and to 18-17 B.C. by Arangio-Ruiz (102-3; cf. Fitzler-Seeck, *RE* 10.353; Premerstein, 157); and is believed by Siber (*Verfassung* 357) to have begun in 22 B.C. Wlassak (*Process* 1.174) finds the *leges Iuliae* undateable, but believes (1.182-3) that the revision of special criminal statutes was completed before 17 B.C. Rotondi (439-40) dates the earliest *lex Iulia* (apart from those of Caesar) to 32 B.C. (*lex Iulia de tutela*) but queries the date. The *lex Iulia maiestatis* is dated to 19-17 B.C. by Atkinson (458-9), to 8 B.C. by Rotondi (453), and to "den allerletzten Jahren des Augustus" by Koestermann (77). No date is assigned to the *maiestas* law by Zumpt, 2.2.476; Mommsen, *Straf* 541; Furneaux, 1.141; Pollack, 199.3, 200; Botsford, 455.9; Ciaceri, 251; Kübler, 548; Grant, 413; Brecht, *Maiestas*, 357-8; Chilton, 73; or Lear, 23.

³⁵ See the authorities cited at p. 213 n.44. For the power of legislation under the *tribunicia potestas* see particularly Grant, 446-53; Salmon, 469; Béranger, 99-101.

could have been introduced in the *concilium plebis* by a tribune at the instigation of Augustus, and named for the instigator (p. 96 n.11).

It must, however, be supposed that the law went further than the mere adjustments occasioned by the settlement of 27 B.C. Marcian (*Dig.* 48.4.3) introduces his enumeration of categories as follows: "Lex duodecim tabularum iubet eum, qui hostem concitaverit quive civem hosti tradiderit, capite puniri. lex autem Iulia maiestatis praecipit eum, qui maiestatem publicam laeserit, teneri: qualis est ille, qui . . ." ³⁶ In addition to unauthorized levies and warfare, and wrongful retention of a province, Marcian cites acts falling under the concept of *proditio*, ³⁷ namely the surrender of positions to the enemy, and desertion. Ulpian attests two cases of *proditio*, aiding the enemy (48.4.1.1) and desertion (48.4.2). Scaevola (48.4.4) gives a full list, and Hermogenian (48.4.10) notices two cases. It has been argued with some force that in the Republic *proditio* was not a formulated criminal concept, but a group of acts punished by consular *coercitio*, or under the arbitrary power of military commanders, and that it did not fall under the public criminal law until legislation absorbed these acts into the *crimen maiestatis*. ³⁸ This view requires the assumption that Marcian's reference to the XII Tables is merely a general reference to customary law (Fuhrmann, *RE* Supp. 9.1225), which may well be the case. In any event, the material fact is that there was legislation which brought various forms of *proditio* under the *crimen maiestatis*. There is nothing against the supposition that these matters were dealt with as part of the arbitration of war and peace which was included in the legislation of 27 B.C. It is therefore postulated that, as far as external affairs were concerned, there was a comprehensive

³⁶ The XII Tables provided a capital sanction for one who incites the enemy or hands over a citizen to the enemy. The *lex Julia maiestatis* provides that one who injures public *maiestas* is liable: for example . . . (tr.)

³⁷ In the general sense of treacherously handing over the person or interests of another to a hostile third party (Brecht, *Perduellio* 1, 27; cf. Fuhrmann, *RE* Supp. 9.1223); this also includes the defection of an ally and the more serious military crimes (Brecht, *Perduellio* 26).

³⁸ Brecht, *Perduellio* 26-112, 225.2, 259-64; Fuhrmann, *RE* Supp. 9.1224-30. Lear (18, 25, 112.20, 117.64) believes that *proditio* was a form of *perduellio*, but does not give enough weight to the research since Mommsen.

maiestas law in 27 B.C., which consolidated the traditional body of customary law, and provided for the new provincial system.

It will be objected that the powers granted to Augustus in 27 B.C. were to endure only for ten years, and that, although they were in fact renewed from time to time, this could not have been anticipated, so that a general statute should not be assumed for a situation which was not necessarily permanent. But the permanence of the new system is correctly stated by Syme (324-5): "This time the domination of a faction was to be permanent and unshaken . . . Definition of powers and extent of *provincia* might later be modified how and when he pleased. One thing could never change, the source and origin of his domination." There is a strong suggestion of a legislative programme in 27 B.C., in Tacitus *Ann.* 3.28.3: "Sexto demum consulatu Caesar Augustus, potentiae securus, quae triumphatu iusserat abolevit deditque iura quis pace et principe uteremur."³⁹ It is not necessary to take "deditque iura" as a Tacitean compression of a lengthy period of time, for if he did not mean that the laws were introduced *sexto consulatu* he would rather have said: ". . . abolevit. mox dedit iura . . ." There is some support for legislation in 27 B.C. in Cassiodorus (*Chron. ad hoc. ann.*), although his chronology is not always reliable: "Caesar leges protulit, iudices ordinavit, provincias disposuit et ideo Augustus cognominatus est."⁴⁰ It may be contended that the grant in 23 B.C. of the troublesome *maius imperium* (p. 208 and nn.30, 31), or more accurately, "imperium (proconsulare) maius quam" (Béranger, 92-6; Wickert, *RE* 22.2.2272), ought to have been accompanied by a *maiestas* law, but this would be so only if the new settlement of 23 had made "iussu principis aut senatus" meaningless. That this was not the case appears not only from Atkinson's analysis of the trial of M. Primus (pp. 185-6), but also from the arguments of Siber (*Verfassung* 276, 280-1), who shows that *maius imperium* external affairs were concerned, there was a comprehensive

³⁹ In his sixth consulship Caesar Augustus, securely entrenched, repealed his acts as triumvir and gave us laws whereunder we enjoyed peace and an emperor. (tr.)

⁴⁰ Caesar proposed laws, organized the courts, arranged the provinces and was named Augustus. (tr.)

had no military content, and "war eine rein bürgerliche Gewalt zur Aufsicht über die statthalterliche Verwaltung der Senatsprovinzen."⁴¹ ⁴²

The proposed *lex Julia maiestatis* of 27 B.C. does not account for all the substantive material in *Digest* 48.4.1-4, 11. Ulpian (*Dig.* 48.4.1.1), apart from the rules which can be ascribed to the law of 27 B.C., discusses the following: "quo (sc. maiestatis crimine) tenetur is, cuius opera dolo malo consilium initum erit . . . quo armati homines cum telis lapidibusve in urbe sint convenientve adversus rem publicam, locave occupentur vel templa"⁴³ (PASSAGE A); "quove coetus conventusve fiat hominesve ad seditionem convocentur"⁴⁴ (PASSAGE B); "cuiusve opera consilio malo consilium initum erit, quo quis magistratus populi Romani quive imperium potestatemve habet occidatur"⁴⁵ (PASSAGE C); "quove quis contra rem

⁴¹ See also Stroux-Wenger, 63.3; Salmon, 470; Sattler, 69. There is no reason to say that the Augustan intervention in a senatorial province attested by the Edicts of Cyrene was in the military sphere.

⁴² Atkinson (456-9), following an entirely different line of reasoning from that of the author, finds that the *lex Julia maiestatis* was introduced in order to give Augustus sole control of levies and declarations of war, and so indirectly of the armed forces. She holds that "the real foundation of the Principate as a permanent institution was the *Lex Julia Maiestatis* (of 18 B.C.)." She dates the *lex* to 19-17 B.C., on the ground that the trial of M. Primus had shown the need for clarification of the question of jurisdiction in matters of war and peace. When Augustus returned to Rome in 19 B.C. he began legislating, and the *maiestas* law was probably the first *lex Julia* to be introduced in 18 B.C. It received precedence because the first decade of his proconsular *imperium* was about to expire. With this law in operation, it was possible in 18 B.C. to grant Agrippa a proconsular *imperium* similar to that of Augustus, for the latter's exclusive control of war and peace furnished the required differentiation between two commanders who were otherwise on an equal footing. The present author, while agreeing neither with Atkinson's date, nor with her belief that the law gave Augustus sole control of levies and war, nor with her reasons for the law's introduction, believes that her hypothesis is the first of its kind, and acknowledges it as the incentive which stimulated the independent line of investigation pursued here.

⁴³ Whoever with wrongful intent forms a design for men armed with missiles and stones to be in Rome or to assemble against the State, or for positions or temples to be seized, is liable to be charged with *maiestas*. (tr.)

⁴⁴ Or a design for meetings or assemblies to be held, or for men to be incited to sedition. (tr.) ⁴⁵ See p. 280.

publicam arma ferat"⁴⁶ (PASSAGE D); "quive milites sollicitaverit concitaveritve, quo seditio tumultusve adversus rem publicam fiat"⁴⁷ (PASSAGE E).

These categories are not introduced by an expression such as *lege Iulia maiestatis tenetur is qui . . .*, as is customary. Ulpian's introductory words are: "Maiestas autem crimen illud est, quod adversus populum Romanum committitur. quo (sc. 'maiestatis crimine', not 'lege Iulia') tenetur is . . ." ⁴⁸ (48.4.1.1). It is most unusual for Ulpian to cite a statutory provision without naming the *lex*, *senatusconsultum*, or imperial constitution. In respect of the *crimina publica* which he is known to have discussed in Books 7 and 8 of his *de officio proconsulis* (Lenel, 2.975-8), the relevant law is named in the case of the *lex Cornelia de sicariis et veneficis* (Coll. 1.3, 6; Dig. 48.8.4); the *lex Julia de vi publica* (Dig. 48.6.7); the *lex Julia peculatus et de sacrilegio et de residuis* (Dig. 48.13.8.1); and the *lex Cornelia de falsis* (Dig. 48.10.9; Coll. 8.7). In the case of the *lex Pompeia de parricidiis*, the only excerpt from *de officio proconsulis* is a brief discussion of a disputed point (Dig. 48.9.6); and even then another jurist (Maecianus) is cited by name. Only in the case of *maiestas* does Ulpian seem to have omitted all reference to his source. It is true that truncation of *Digest* 48.4.1.1 by the compilers cannot be excluded. For example, the *senatusconsultum* which Ulpian cited on the *lex Cornelia de falsis* (Coll. 8.7) is omitted from the same excerpt in *Digest* 48.10.9.3; but even then the citation of the *lex Cornelia* itself is retained in the *Digest* excerpt. The absence of citation in *Digest* 48.4.1.1 is particularly striking if regard is had to the comprehensive list of acts which Ulpian sets out.⁴⁹ The evidence suggests that Ulpian did not cite a *lex Julia maiestatis* in *de officio proconsulis*. He composed his own 'definition' of the crime and then gave a number of illustrations. The random order in which these are set out is

⁴⁶ Whoever with wrongful intent forms a design for the murder of a magistrate of the Roman People or a holder of *imperium* or *potestas*. (tr.)

⁴⁸ Or a design for anyone to bear arms against the State. (tr.)

⁴⁷ Whoever arouses or incites soldiers to sedition or insurrection against the State. (tr.)

⁴⁹ Now *maiestas* is the crime which is committed against the Roman People. Those are liable for this crime who . . . (tr.)

also significant. The first, concerning the execution of hostages, relates to external affairs. Next come A, B, C, and D, which concern internal matters.⁵⁰ Aiding the enemy is a reversion to the external field, and the excerpt concludes with E, which is internal rather than external. This haphazard sequence does not appear to have been taken *en bloc* from any one statute, and the suggestion is that Ulpian selected his illustrations from more than one *lex*.

There is a striking similarity between A and a provision of the *lex Julia de vi* (Paul *Sent.* 5.26.1): "quive cum telo in publico fuerit, templa portasve aliudve quid publicum armatis obsederit cinxerit clauserit occupaverit".⁵¹ Mommsen (*Straf* 563.1, 3; 564; 657) explains the close agreement between *vis* and the 'violent' form of *maiestas* by supposing that the crime was *maiestas* against the instigators and ringleaders, and *vis* against subordinates. Flore (342), rejecting this view, holds that *Sententiae* 5.26.1 is spurious. Zumpt (2.1.270-3) argues, rather plausibly, that the distinction between the two crimes turned on whether *maiestas populi Romani* was involved; Norbanus was acquitted of *maiestas*, although he had used force, but would have been convicted on the same facts under the *lex Plantia de vi*. Although Zumpt does not consider the effect of a plea of *maiestatem auxi*, his argument amounts to saying that this plea was available on a charge of *maiestas*, but not on a charge of *vis* on the same facts. The difficulty, however, is Cicero, *Cael.* 29.70: "De vi quaeritis: quae lex ad imperium, ad maiestatem, ad statum patriae, ad salutem omnium pertinet."⁵² It is not possible to assume an indictment under the *lex maiestatis* when magistrates and senators were charged,

⁴⁹ An idea of Ulpian's method when he dealt extensively with a criminal topic in *de officio proconsulis* can be gathered from *Collatio* (15.2—"de mathematicis et vaticinatoribus"), where he begins with a brief statement of the nature of the crime (cf. *Dig.* 48.4.1.1), cites the earliest relevant legislation (absent from *Dig.* 48.4.1.1), gives a full exposition of the substantive law (cf. *Dig.* 48.4.1.1) and penalties (absent from *Dig.* 48.4.1.1), touches on changes in the law (absent from *Dig.* 48.4.1.1), and cites imperial constitutions (absent from *Dig.* 48.4.1.1).

⁵⁰ For Ulpian's curious concentration on domestic matters, in a work written for the guidance of provincial governors, see Schiller, 333-7.

⁵¹ Whoever goes about with a missile or blockades, surrounds, cuts off or seizes temples or gates. (tr.) ⁵² See p. 282.

and under the *lex de vi* against all other persons, for magistrates could also be charged *de vi* (Dig. 48.6.7). Furthermore, Caesar's *maiestas* law made the crime applicable to all classes (p. 160 above), so that from then on anyone could be charged either with *maiestas* or *de vi*. The position was probably similar to that whereunder, on the same facts, there could be a charge of *maiestas* or extortion (pp. 85-7). Given an act of violence, the *lex de vi* was probably preferred if there was a danger that the jury might be persuaded to return a verdict of *maiestatem auxisti*.

A, B, D, and E, as examples of *maiestas minuta per vim*, would have been quite at home in Caesar's *maiestas* law. But there would have been no pressing reason for their inclusion in the law of 27 B.C., and the Romans did not legislate unnecessarily (p. 70 and n.32). It follows either that Ulpian took this material from Caesar's law, or that Augustus introduced a second law at some time after 27 B.C. The disturbances attending the consular elections from 22 to 19 B.C. (Syme, 371-2) could have supplied the incentive for a 'violent' *maiestas* law, but the silence of Suetonius and Dio (p. 267) is particularly significant in the light of their express mention (Suet. *Aug.* 34.1; Dio, 54.16) of the *lex de ambitu*, for that law owed its introduction in 18 B.C. to the same disturbances (Mommсен, *Straf* 867.7). Faced with a known law of Caesar which readily accounts for A, B, D, and E, and in the absence of any evidence of an equivalent Augustan *lex*, it should be assumed that Ulpian derived this material from Caesar's law.

C is a special case. Pollack (201 and n.1) points out that there is no suggestion in this passage of any special rule regarding assassination of the *princeps*. It should be noticed that the rule as stated by Ulpian is wholly Republican in form, but the date of its first introduction is not clear. It would not have been brought in under the Appuleian, Varian, or Cornelian laws, for in 63 B.C. the *comitia*, and not the *quaestio*, provided the forum for the trial of C. Rabirius (pp. 32-3). Furthermore, the *lex Pedia* of 43 B.C. would have been unnecessary if C had been included in Caesar's law. It is probable

* * You ask about the *lex de vi*: this law is concerned with the empire, *maiestas*, the condition of the country, the security of everyone. (tr.)

that C was introduced by the *lex Pedia*. In this regard it should be noticed that, although a *lex Pedia* is expressly attested by some sources (Vell. 2.69.5; Suet. *Nero* 3.1; *Galba* 3.2), others attribute the law to Octavian.^{52a} If the law was instigated by C. Iulius Caesar (Octavian), a variant tradition may have known it as a *lex Julia*. Indeed Augustus would have wanted his name to be associated with the law with which *Res Gestae* opens (*Res Gestae* 1). It has been suggested (pp. 171-2) that the *lex Pedia* was a *maiestas* law, so that it may very well have been known as a *lex Iulia maiestatis*.

The foregoing suggestions do not account for all the material in *Digest* 48.4.1-4, for the following do not fit readily into the laws which have been assumed for either Caesar or Augustus: "quive sciens falsum conscripsit vel recitaverit in tabulis publicis"⁵³ (*Dig.* 48.4.2) (PASSAGE F); "quive privatus pro potestate magistrature quid sciens dolo malo gesserit"⁵⁴ (*Dig.* 48.4.3) (PASSAGE G); "item qui confessum in iudicio reum et propter hoc in vincula coniectum emisit"⁵⁵ (*Dig.* 48.4.4) (PASSAGE H). It may be argued that G and H are quite inconsequential in their respective contexts, having no conceptual connection with what goes before, and having the appearance of 'odd lots' which have simply been tagged on in order to get rid of them. But F is documented, for Ulpian (*Dig.* 48.4.2) says of it: "nam et hoc capite primo lege maiestatis enumeratur".⁵⁶ The difficulty occasioned by G and H is perhaps not great, for it may be accepted that any act which constituted the crime of *vis* could also have been included in a statute dealing with *maiestas minuta per vim*. A recognized form of *vis* was "Vollziehung eines magistratischen Actes von Seiten eines dazu nicht befugten Beamten oder eines Privaten" (Mommson, *Straf* 663), which is on all fours with the position contemplated by G. It is also possible to regard H as an

^{52a} Livy, *Per.* 120; App. *B.C.* 3.14.95; Dio, 46.48.2; Plut. *Brut.* 27.3.

⁵³ Whoever knowingly makes a false entry in or reading of a public document. (tr.)

⁵⁴ Whoever as a private citizen knowingly and with wrongful intent exercises the function of a magistrate. (tr.)

⁵⁵ Whoever releases an accused who, having confessed, has been lodged in prison. (tr.)

⁵⁶ This too is specified in the first chapter of the *maiestas* law. (tr.)

example of the general rule laid down in G, for the release of a confessed criminal was clearly a usurpation of magisterial authority. It may be accepted that G and H are not irreconcilable with Caesar's law, from which it follows that Marcian and Scaevola, like Ulpian, selected their material from more than one *lex*. It is less easy, however, to dispose of F. It may be argued that it is a short step from the exercise of authority by one who is not authorized, to the improper exercise of an authority which is in fact possessed. It would follow that the case mentioned in F contemplated a false entry by someone in an official capacity, who had access to the public records, and who was under a duty to make proper entries. It can also be pointed out that abuse of authority was in fact a form of *vis* (*Dig.* 48.6.7). But the argument is not entirely satisfactory, for in *Digest* 48.6.7 it is the special case of a magistrate doing violence to a citizen in contempt of *provocatio*, which does not warrant the assumption that *vis* covered the improper exercise of authority in general.

If F cannot be satisfactorily reconciled with Caesar's law, and if it does not by its nature commend itself as an ingredient of the Augustan law of 27 B.C., a further search should be made for a second Augustan *lex*. In this regard there is an avenue which merits exploration. A century ago Zumpt (2.1. 51-54, 70-92) put forward the proposition that the judiciary law of C. Gracchus not only laid down rules of criminal procedure, but also set out substantive categories of crimes. This theory has been restated by Henderson (*passim*, and cf. p. 24 n.14). Although the theory has not been accepted for Gracchus' law, it is worthwhile considering whether there is any room for the application of a similar hypothesis to the *lex Julia iudiciorum publicorum*, a general judiciary law which, on the majority view, was introduced (in 17 B.C.) by Augustus, rather than by Caesar.⁵⁷ Although a strong body of opinion⁵⁸ holds that this law was only a general code of criminal pro-

⁵⁷ Augustan authorship is accepted by Wlassak, *Process* 1.173, 180-90, 198; Girard, *Leges* 344-52; Rotondi, 448-9; Weiss, *RE* 12.2364; Volkmann, 214-5; Arangio-Ruiz, 105-9. The law is ascribed to Caesar by Mommsen, *Straf* 128, 655 and McFayden, 219-27.

⁵⁸ Wlassak, *Process* 181-3; Girard, *Leges* 321-31, 356-64; Arangio-Ruiz, 105-10.

cedure, and that the substantive categories of individual crimes remained the subject of special laws, it is proposed briefly to test the possibility that in this statute, which contained at least eighty-eight chapters (McFayden, 220), there were chapters on particular crimes, including a chapter which consolidated the substantive categories of *maiestas*. The first piece of evidence is *Digest* 48.14.1.4: "si qui reus vel accusator domum iudicis ingrediatur, per legem iudiciariam in legem (sc. Iuliam) ambitus committit".⁵⁹ The rule against visiting a juror was included in the Augustan judiciary law (Girard, *Leges* 330), and the *lex Julia ambitus* was Augustan (Arangio-Ruiz, 110). It may seem that the *lex de ambitu* formed a chapter in the judiciary law, for the explanation (Girard, *Leges* 304.3) that the penalty of the *ambitus* law was merely borrowed by the judiciary law is strained. The typical expression, where one *lex* applied the penalty of another, was: "lege Pompeia de parricidiis cavetur, ut, si quis . . . occiderit . . . poena ea teneatur, quae est legis Corneliae de sicariis"⁶⁰ (*Dig.* 48.9.1). And "in legem committere" (cf. *Dig.* 48.14.1.4) suggests a contravention of the particular statute mentioned, rather than a 'borrowing', as in: "divus Claudius edicto praecepit adiciendum legi Corneliae ut, si quis . . . scripserit, proinde teneatur, ac si commississet in legem Cornelianam"⁶¹ (*Dig.* 48.10.15pr). Secondly, there are the curious duplications: "famosi quoque accusantes sine ulla dubitatione admittuntur"⁶² (*Dig.* 48.2.13) (J); and "famosi, qui ius accusandi non habent, sine ulla dubitatione admittuntur ad hanc accusationem"⁶³ (*Dig.* 48.4.7pr) (K); "milites quoque, qui causas alienas deferre non possunt, qui pro pace excubant, vel magis ad hanc accusationem admittendi sunt"⁶⁴ (*Dig.* 48.2.13) (L); and "sed et milites, qui causas alias defendere"⁶⁵ non possunt: nam qui

⁵⁹ If an accused or accuser enters the house of a juror he is deemed by the judiciary law to contravene the *ambitus* law. (tr.)

⁶⁰ The *lex Pompeia de parricidiis* provides that whoever kills is liable to the penalty provided by the *lex Cornelia de sicariis*. (tr.)

⁶¹ The emperor Claudius added a provision to the *lex Cornelia*, whereunder whoever . . . wrote was liable as if he had contravened the *lex Cornelia*. (tr.)

⁶² Those who have incurred infamy are certainly accepted as accusers. (tr.)

⁶³ Those who lack the right of accusation because they have incurred infamy are certainly allowed to bring this accusation. (tr.) ⁶⁴ and ⁶⁵ See p. 286.

pro pace excubant, magis magisque ad hanc accusationem admittendi sunt"⁶⁶ (*Dig.* 48.4.7.1) (M); "servi quoque deferentes audiuntur"⁶⁷ (*Dig.* 48.2.13) (N); and "servi quoque deferentes audiuntur et quidem dominos suos"⁶⁸ (*Dig.* 48.4.7.2) (O). Passages J, L, and N are from Marcian (*De Publicis Iudiciis* I), and appear in *Digest* 48.2—"de accusationibus et inscriptionibus", a title which is largely concerned with the *lex Julia iudiciorum publicorum*. K, M, and O are from Modestinus (*Pandecta* XII), and appear in *Digest* 48.4—"ad legem Iuliam maiestatis". It may be felt that Marcian and Modestinus must be commenting on the same *lex*, namely the judiciary law, which may suggest that *maiestas* formed a chapter in that law.

On balance, however, it is not possible to disturb the view that the judiciary law did not include substantive categories. The decisive passage is *Digest* 48.1.1: "Non omnia iudicia, in quibus crimen vertitur, et publica sunt, sed ea tantum, quae ex legibus iudiciorum publicorum veniunt, ut Iulia maiestatis, Iulia de adulteriis, Cornelia de sicariis et veneficis, Pompeia parricidii . . . Cornelia de testamentis . . . Iulia ambitus."⁶⁹ The inclusion of two Cornelian laws and one Pompeian excludes the possibility that "quae ex legibus iudiciorum publicorum veniunt" means that the individual laws which follow formed part of a Julian judiciary law. In any event, such a derivation would have been expressed as *quae ex lege iudiciorum publicorum veniunt*. Furthermore, two of the laws mentioned, *Julia de adulteriis* and *Julia ambitus*, are known to have been introduced by Augustus as independent laws (*Suet Aug.* 34.1).⁷⁰

In the result, it does not seem possible to locate an

⁶⁶ Soldiers, who are not allowed to bring prosecutions, should, as the guardians of the peace, be allowed to bring this accusation. (tr.)

⁶⁷ *alienas deferre*, Mommsen-Krüger, 845.1.

⁶⁸ Including soldiers, who are not allowed to bring prosecutions: for those who guard the peace should be allowed to bring this accusation. (tr.)

⁶⁹ Slaves too are allowed to bring charges. (tr.)

⁷⁰ Slaves too are allowed to bring charges, even against their masters. (tr.)

⁷¹ Not all courts in which charges are canvassed are public courts, but only those deriving from the laws on public courts, such as the *lex Julia maiestatis*, the *lex Julia de adulteriis*, the *lex Cornelia de sicariis et veneficis*, the *lex Pompeia parricidii*, the *lex Cornelia de testamentis*, the *lex Julia ambitus*. (tr.)

Augustan *maiestas* law other than the law of 27 B.C., so that the rule against false entries in public records (F) should be assigned to Caesar's category of *maiestas minuta per vim*. It is therefore found that the substantive material in *Digest* 48.4.1-4, 10 consists of citations from the *maiestas* laws of both Caesar and Augustus, and possibly from the *lex Pedia (Julia)* as well.

In conclusion, three other problems raised by *Digest* 48.4 may be briefly noticed. Ulpian (48.4.11) says that the death of the accused before judgment extinguishes the charge, but adds: "nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgetur, hereditas fisco vindicatur. plane non quisque legis Iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animatus: ceterum si quis ex alia causa legis Iuliae maiestatis reus sit, morte crimine liberatur."⁷¹ It is generally agreed that there is no question here of the survival of *perduellio* as a separate crime distinct from *maiestas*, but only of its employment by Ulpian as a convenient way of distinguishing the more serious from the lesser forms of *maiestas*.⁷² Kübler (553) believes that *perduellionis* is an interpolation, and indeed the entire section "plane . . . liberatur" is suspect. Not only is *plane* one of the typical signs of an interpolated passage (Wenger, 584), but the phrase "adversus rem publicam vel principem" does not ring true, in the light of Ulpian's own 'definition' of *maiestas* as directed "adversus populum Romanum", without including the *princeps* (*Dig.* 48.4.1.1). Furthermore, *Digest* 48.4.11 is misplaced, for it

⁷⁰ *Digest* 48.1.1 is against McFayden's theory (219, 226.69—following Mommsen, *Straf* 128-9, 655) that the Julian laws *de vi publica* and *de vi privata* were, respectively, the same statutes as the public and private judiciary laws. The *leges de vi* are included among the various individual laws "quae ex legibus iudiciorum publicorum veniunt".

⁷¹ Unless he was accused of *maiestas*: for unless he is cleared of this charge by his heirs, his estate is forfeited to the treasury. Clearly not every accused under the *lex Julia maiestatis* is in this position, but those only who are accused of *perduellio*, being alleged to have had a hostile intent against the State or the emperor; those who are accused on any other basis under the *lex Julia maiestatis* are freed of the charge by death. (tr.)

⁷² Rein, 500; Greenidge, *Treason* 237; Pollack, 169.1; Brecht, *Perduellio* 213-4.

should have been grouped with the other excerpts from Ulpian, under the Sabinian mass⁷³ which heads the material in the title. Such a displacement is an indication that two titles have been combined (Wenger, 584), so that it is a fair inference that *Digest* 48.4.11 is not *ad legem Iuliam maiestatis* at all. The important aspect of the passage, for the present purpose, is the reference to "legis Iuliae maiestatis reus", for if the passage were authentic this would have a twofold significance. It would be an attestation by Ulpian of a specific *lex Julia maiestatis*, which would weaken the submissions which have been based on his failure to cite the *lex* in his *de officio proconsulis*. And it would tend to support the opinion of Greenidge (*Treason* 236-7), that the *lex Julia* was divided into two sections, covering in part the same acts, but viewed separately, depending on whether they were or were not committed *hostili animo*; if Greenidge's findings were valid, it would be difficult to avoid a single consolidating Augustan statute, in substitution for all previous legislation. But the decisive argument against the authenticity of the passage, at least in so far as Ulpian is to be understood as intending to cite provisions of the *lex Julia*, has been advanced by Volterra (488-90). He shows that posthumous *maiestas* charges were first introduced by a constitution of Marcus Aurelius (*Code J.* 9.8.6pr, 6.2), and were not, and could not have been, provided for in a law of Caesar or Augustus. The precedent created by Marcus Aurelius was expanded under the Severi, and it was then that the contemporary classical jurists transmitted it: Ulpian *Dig.* 48.4.11; Paul *Code J.* 9.8.6pr; and Marcian *Code J.* 9.8.6.2-4.

"Proximum sacrilegio crimen est, quod maiestatis dicitur" (*Dig.* 48.4.1pr). If this statement was made by Ulpian in Book 7 of his *de officio proconsulis* it does not, of course, mean that a term to this effect appeared in a *lex Julia maiestatis* (cf. Matthaeus, 311). But it would tend to show that, as early as the third century A.D., the majesty of the *princeps* had acquired the force of a technical legal concept, in substitution for *maiestas populi Romani*. It is not, however, certain that

⁷³ On Bluhme's theory of 'masses' see Jolowicz, 493-4; Schulz, *Legal Science* 319-21; Wenger, 583-4.

the statement was made by Ulpian. In its primary meaning⁷⁴ *sacrilegium* did not convey the notion of the English word 'sacrilege', for it simply meant "das Furtum bezogen auf das Göttergut".⁷⁵ As such it was dealt with by the *lex Julia peculatus et de sacrilegis et de residuis* (Dig. 48.13). In his commentary on this law Ulpian, in the same Book 7 of his *de officio proconsulis* (Dig. 48.13.7), discusses *sacrilegium* in terms which clearly show that he understood it as the theft of *res sacrae*: "Sacrilegii poenam debet proconsul . . . statuere . . . sed moderanda poena est usque ad bestiarum damnationem eorum qui manu facta templum effregerunt et dona dei in noctu tulerunt."⁷⁶ Why does Ulpian say that *maiestas* is *proximum* to the theft of *res sacrae*, particularly as he then proceeds to 'define' *maiestas* (Dig. 48.4.1.1) in terms which have nothing to do with theft or with *res sacrae*? If *proximum* is intended to convey a resemblance between the two crimes, Ulpian's statement is meaningless, and must be marked as a suspected interpolation.⁷⁷ It may, however, be possible to retain the passage by interpreting *proximum* in a temporal sense as 'next to, in point of time'. The purpose of *de officio proconsulis* was to provide provincial governors with a succinct restatement of the laws which they needed to know (Schulz, *Legal Science* 243-4), and it may well be that Ulpian found it convenient to follow a chronological method when he dealt with criminal law (Books 7 and 8—Lenel, 2.973-83). If *maiestas* was *proximum* to *sacrilegium* in a temporal sense, it means that immediately before he came to *maiestas* Ulpian had discussed *sacrilegium*. He had done so because *sacrilegium* was chronologically antecedent to *maiestas*, in the sense that the earliest *quaestio* which was set up *de sacrilegis* was the *quaestio auri Tolosani* of 104 B.C., which investigated the

⁷⁴ For the secondary meaning, which became significant with the rise of Christianity, see Mommsen, *Straf* 569.2, 600.4, 760.7.

⁷⁵ Mommsen, *Straf* 760; cf. Matthaeus, 311-2; Pfaff, *RE* 1A.2.1678-80.

⁷⁶ A proconsul should lay down a penalty for sacrilege; the penalty should be confined to condemnation to the beasts in the case of those who break into a temple and remove the offerings to the god by night. (tr.)

⁷⁷ The difficulty does not seem to have been noticed by Lenel (2.975 and n.2), who assumes a title *de sacrilegis* (in *De Officio Proconsulis* VII), which is supposed to have dealt with *sacrilegium* in the sense of 'sacrilege'.

plundering of the temple at Tolosa by Q. Servilius Caepio (pp. 40-2). The next *quaestio* in date order was the *quaestio maiestatis*, under the *lex Appuleia* of 103 B.C., and therefore *maiestas* was *proximum sacrilegio*.⁷⁸

"Qui statuas aut imagines imperatoris iam consecratas conflaverint aliudve quid simile admiserint, lege Iulia maiestatis tenentur"⁷⁹ (Venuleius Saturninus, *Dig.* 48.4.6). This is the only excerpt in *Digest* 48.4 which, at first sight, suggests that imperial statues were dealt with by an actual *lex Julia*. The other references to the same subject expressly attest a decree of the Senate (48.4.4.1) and imperial rescripts (48.4.5). Kübler (552) takes the case postulated by Venuleius Saturninus as one of extensive interpretation, but the question needs discussion in view of the proceedings attested by the Second Edict of Cyrene, of 7-6 B.C.⁸⁰ The general meaning of the Edict⁸¹ is that Publius Sextius Scaeva, the proconsul of Cyrenaica,⁸² sent Aulus Stlaccius Maximus, Lucius Stlaccius Macedo, and Publius Lacutanius Phileros as prisoners to Augustus, because they alleged that they had information concerning the safety of Augustus and the public welfare—*δ πρὸς τὴν ἐμὴν σωτηρίαν τὰ τε δημόσια πράγματα ἀνῆκεν*—and wished to speak of it. Augustus released them, as they had no such information, and as they made it clear to him that what they had said in the province was false.⁸³ But Aulus Stlaccius Maximus, who was accused by the Cyrenaican envoys of having removed statues from public sites, including one which the city had inscribed with Augustus' name, was ordered to

⁷⁸ This argument may be used in favour of 103 B.C., rather than 100, as the date of the *lex Appuleia maiestatis*.

⁷⁹ Those who melt down statues or images of the emperor which have already been consecrated, or do anything similar, are liable under the *lex Julia maiestatis*. (tr.)

⁸⁰ For the text see Stroux-Wenger, 10; Anderson, 35.

⁸¹ For the linguistic difficulties, see Stroux-Wenger, 35-7.

⁸² Laqueur (*passim*) holds that Scaeva was not the governor, but a delator, arguing that the exculpation of Scaeva, on which the Edict lays much stress, would not have been needed for a governor who was merely doing his duty, but was necessary to protect an informer.

⁸³ So Anderson, 39. Stroux-Wenger (11, 36) prefer: "They made it clear that the statement which they were alleged to have made in the province had been falsely attributed to them."

remain in Rome until Augustus had investigated the matter.

The removal of the statue has been explained as a case of *maiestas* (Anderson, 39; Stroux-Wenger, 72.2), but the juristic basis of the charge should be further considered. It is clear that the *quaestio maiestatis* did not try the case, for Augustus dealt with it in his imperial criminal court: *ἕως ἂν περὶ τούτου τοῦ πράγματος διαγνῶ*. Aulus Stlaccius seems to have been on a frolic of his own, as far as this particular incident was concerned, for the other two would not have been unconditionally released if there had been any suggestion of a plot, in which the removal of the statue was an element. The charge looks very much like an afterthought on the part of the Greek envoys from Cyrenaica, who apparently appeared before Augustus when the three accused were arraigned. Having failed on the main count, the Greeks seem to have brought up the escapade of Aulus Stlaccius, in a last attempt to secure a conviction. As the Stlaccii were Roman citizens (Anderson, 39), the entire case may well have been an incident in that vendetta between Cyrenaican Greeks and Roman citizens, which seems to be attested by the First Cyrene Edict. If the *lex maiestatis* had specifically provided for the case of the statue, the Greeks would have prepared their brief on that charge as well, before going to Rome. In that event the separate trial of Aulus Stlaccius would have been disposed of at the same time, instead of being remanded for further investigation. The basis on which Augustus entertained the second charge was probably the principle of 'violated majesty'. Although the title of *pater patriae* had not yet been officially conferred when Stlaccius was charged in 7-6 B.C., it was already in common use, and was particularly employed as an inscription on provincial statues (Hor. *Carm.* 3.24.27-8; cf. p. 240; cf. also Alföldi, 2.115). It was very possibly a statue inscribed to Augustus as *pater urbium* which Stlaccius had removed, and Augustus was not unwilling to receive the Cyrenaican complaint.

The legal basis on which the three Roman citizens were originally sent to Augustus is not clear. At first sight it seems that information "about the safety of the *princeps*" fell under the ban on consulting astrologers and soothsayers "de salute principis vel summa rei publicae" (Paul *Sent.* 5.21.3; Ulpian,

Coll. 1.15.2)—πρὸς τὴν ἐμὴν σωτηρίαν καὶ τὰ δημόσια πράγματα (Second Cyrene). There are, however, two objections to a charge of this nature in 7-6 B.C. The earliest legislation against the consultation of astrologers seems to have been a *senatusconsultum* of A.D. 17, judging by Ulpian's well-documented discussion of the topic (*Coll.* 1.15.2). This would have been the decree (*Tac. Ann.* 2.32.5) which followed the trial of Libo Drusus (*Tac. Ann.* 2.27-32). And there is no suggestion in the Second Cyrene that the accused had consulted astrologers, but only that they had information, or said that they had it. There is much merit in the suggestion (Stroux-Wenger, 72.2) that μή should be added at the end of line 45 (Second Edict). The position then would have been that the accused, when confronted by the governor with the demand that they disclose this information, refused to do so. This would have made it a straight case of τὸ ἐπιβουλεύειν, for the governor would then have been entitled to treat them as possible accomplices in a suspected conspiracy.

Conclusion

In regard to the two propositions which the thesis has attempted to defend, it is felt that 'the theory of the little laws' has fared reasonably well. The balance of probability seems to lean rather distinctly in favour of the view that the Appuleian, Varian, Sullan, and Caesarian laws did not go beyond the respective categories which, on the evidence, should be allocated to them. A similar finding in the case of the Augustan law is untenable only if there is sufficient reason to say that all the substantive statutory material in the juristic sources derives from a single *lex maiestatis*. If this conclusion were inevitable, the single statute would have to be identified as Augustan rather than Caesarian, for two reasons. Firstly, the probability that Caesar's law should be limited to *maiestas minuta per vim* disqualifies it as a general statute. Secondly, at least part of the *lex Julia maiestatis* of the juristic sources must be Augustan, if the proposed identification of the law of 27 B.C., as attested by Dio, with the provisions of a *lex Julia maiestatis*, as attested by Marcian and Ulpian, is valid. The problem largely depends, however, on the validity of the attempt which has been made to identify elements of three different laws in *Digest* 48.4. It is not possible to be dogmatic on this issue, but it may be felt that the arguments advanced leave it at least an open question as to whether a single statute or several statutes should be assumed in respect of the legislative material included in this title of the *Digest*.

It is felt that the four other 'little laws of *maiestas*' which have been postulated may have been correctly identified. The question is mainly whether or not breaches of these laws were referred to the *quaestio maiestatis*, and it is submitted that the evidence favours that *quaestio* rather than any other. In addition, the categories prescribed by the *lex Papia*, the *lex Licinia Iunia*, the *lex Hirtia*, and the *lex Pedia* are essentially *maiestas* categories.

The author is both reasonably satisfied, and somewhat dissatisfied, with 'the theory of the unchanged *maiestas populi Romani*'. On the one hand it is felt that, as far as the inquiry has been taken, it may have thrown some light on the thorny problems of the constitutional positions of Caesar and Augustus, in so far as those problems can be approached by way of the *crimen maiestatis*. Furthermore, the finding that there was no transformation of the concept of *maiestas populi Romani* as the technical focal point of the *crimen maiestatis populi Romani imminutae* may have clarified certain aspects of the crime. It may also be felt that the distinction which has been proposed between the crimes of 'diminished *maiestas*' and 'violated majesty' assists in understanding the apparent anomalies in the concept of the *domus Caesaris*.

On the other hand, the scope of the study has imposed limitations on the development of the theme that the concept of 'violated majesty' was parallel to that of 'diminished *maiestas*', but independent of it. It has been noticed in passing that the two concepts seem to have coalesced at some time subsequent to the Augustan period, but the further pursuit of this question has not been possible within the framework of the study. It is felt, in particular, that an investigation of 'violated majesty' from Tiberius to Domitian may have interesting results, and the author hopes, at another time, to develop the preliminary survey which he has made in this regard.

Bibliography

SECTION 1: SOURCES

(A) JURISTIC SOURCES

Collatio Legum Mosaicarum et Romanarum

GAIUS. *Institutiones*

JUSTINIANUS. *Institutiones*

— *Digesta sive Pandectae*

— *Codex*

IULIUS PAULUS. *Sententiae*

THEODOSIUS II. *Codex*

Collatio (or *Coll.*)

Gaius

Inst.

Digest (or *Dig.*)

Code J.

Paul *Sent.*

Code Th.

(B) LITERARY SOURCES

Latin Authors

AMMIANUS MARCELLINUS. *Res Gestae*

Q. ASCONIUS PEDIANUS. *Orationum Ciceronis Quinque Enarratio*

PSEUD.-ASCONIUS

(AUCTOR). *Bellum Africum*

(AUCTOR). *Bellum Alexandrinum*

(AUCTOR). *Bellum Hispaniense*

(AUCTOR). *Ad Herennium*

AURELIUS AUGUSTINUS. *De Civitate Dei*

CASSIODORUS. *Chronica*

C. IULIUS CAESAR. *De Bello Gallico Libri VII*

— *De Bello Civili Libri III*

M. TULLIUS CICERO. *Pro L. Cornelio Balbo Oratio*

— *Pro M. Caelio Oratio*

— *In L. Catilinam Orationes IV*

— *Pro A. Cluentio Habito Oratio*

— *Pro Rege Deiotaro Oratio*

— *De Domo Sua ad Pontifices Oratio*

Ammianus

Asconius, or

Ascon.

Ps-Ascon.

Bell. Af.

Bell. Alex.

Bell. Hisp.

Auct. Herenn.

St Augustine,

Civ. Dei

Cassiodorus

Caes. *B.G.*

Caes. *B.C.*

Cic. *Balb.*

Cic. *Cael.*

Cic. *Cat.*

Cic. *Cluent.*

Cic. *Deiot.*

Cic. *Dom.*

—*De Lege Agraria contra P. Servilium Rullum Orationes*
III

- Pro Q. Ligario Oratio*
- Pro M. Marcello Oratio*
- Pro T. Annio Milone Oratio*
- In M. Antonium Orationum Philippicarum Libri XIV*
- In L. Calpurnium Pisonem Oratio*
- Pro Cn. Plancio Oratio*
- De Provinciis Consularibus Oratio*
- Post Reditum ad Quirites Oratio*
- Pro Rabirio Perduellionis Reo*
- Pro Rabirio Postumo Oratio*
- Pro Sex. Roscio Amerino Oratio*
- Pro P. Sestio Oratio*
- In P. Vatinius Testem Interrogatio*
- Accusationis in C. Verrem Actio Prima*
- Actionis Secundae in C. Verrem Libri V*
- Brutus*
- De Divinatione*
- De Inventione*
- De Legibus*
- De Natura Deorum*
- De Officiis*
- Orator*
- De Oratore*
- Paradoxa Stoicorum*
- Partitiones Oratoriae*
- De Re Publica*
- De Senectute*
- Topica*
- Tusculanae Disputationes*
- Epistulae ad Atticum*
- Epistulae ad Familiares*
- Epistulae ad Quintum Fratrem*

- Cic. *Leg. Agrar.*
- Cic. *Lig.*
- Cic. *Marc.*
- Cic. *Mil.*
- Cic. *Phil.*
- Cic. *Pis.*
- Cic. *Planc.*
- Cic. *Prov. Con.*
- Cic. *Quirit.*
- Cic. *Rab. Perd.*
- Cic. *Rab. Post.*
- Cic. *Rosc. Amer.*
- Cic. *Sest.*
- Cic. *Vat.*
- Cic. *Verr.*
- Cic. *Verr.*
- Cic. *Brut.*
- Cic. *Divin.*
- Cic. *Invent.*
- Cic. *Leg.*
- Cic. *Nat. Deor.*
- Cic. *Off.*
- Cic. *Or.*
- Cic. *Orat.*
- Cic. *Parad.*
- Cic. *Part. Orat.*
- Cic. *Rep.*
- Cic. *Senect.*
- Cic. *Top.*
- Cic. *Tusc.*
- Cic. *Att.*
- Cic. *Fam.*
- Cic. *Quint.*
- Frat.*

ENNIUS. *Annales*

Ennius, *Ann.*

L. ANNAEUS FLORUS. *Epitomae*

Florus

AULUS GELLIUS. *Noctes Atticae*

Gell.

EUSEBIUS HIERONYMUS.

Jerome

A. HIRTIUS. *De Bello Gallico Liber VIII*

Hirt. *B.G.* 8

Q. HORATIUS FLACCUS. *Carmina*

Hor. *Carm.*

—*Saturae*

Hor. *Sat.*

—*Epistulae*

Hor. *Ep.*

M. IUNIANUS IUSTINUS. *Epitoma Historiarum Philippicarum Pompei Trogi*

Iustinus

GRANIUS LICINIANUS.

Licin.

TITUS LIVIUS. *Ab Urbe Condita*

— *Periochae Omnium Librorum*

— *Fragmenta Oxyrhynchi Reperta*

M. ANNAEUS LUCANUS. *Pharsalia*

A. THEODOSIUS MACROBIUS. *Saturnalia*

M. MANILIUS. *Astronomica*

CORNELIUS NEPOS. *Atticus*

IULIUS OBSEQUENS. *Prodigiorum Liber*

PAULUS OROSIUS. *Historiae adversum Paganos*

P. OVIDIUS NASO. *Amores*

— *Fasti*

— *Tristia*

— *Epistulae ex Ponto*

T. MACCIUS PLAUTUS. *Miles Gloriosus*

C. PLINIUS SECUNDUS. *Naturalis Historia*

C. PLINIUS CAECILIUS SECUNDUS. *Epistulae*

PORCIUS LATRO. *Declamatio in Catilinam*

M. FABIUS QUINTILIANUS. *Institutiones Oratoriae*

— *Declamationes*

C. SALLUSTIUS CRISPUS. *Bellum Iugurthinum*

— *Ad Caesarem Senem de Re Publica Oratio*

— *Ad Caesarem Senem de Re Publica Epistula*

— *Oratio Philippi in Senatu*

Scholia Bobiensia ad Ciceronem

Scholia Gronoviana ad Ciceronem

L. ANNAEUS SENECA (RHETOR). *Controversiae*

— *Suasoriae*

L. ANNAEUS SENECA (PHILOSOPHUS). *De Beneficiis*

— *De Brevitate Vitae*

— *De Clementia*

— *Ad Marciam de Consolatione*

— *Epistulae Morales*

— *Octavia*

SERVIUS.

C. SUETONIUS TRANQUILLUS. *Divi Iulii Vita*

— *Divi Augusti Vita*

— *Tiberii Vita*

— *Caligulae Vita*

— *Neronis Vita*

— *Galbae Vita*

— *Divi Vespasiani Vita*

— *De Grammaticis et Rhetoribus*

Livy

Livy, *Per.*

Livy, *Per. Oxy.*

Lucan *Phars.*

Macrobi. *Sat.*

Manilius

Nepos, *Att.*

Obsequens

Orosius, or Oros.

Ovid, *Amores*

Ovid, *Fasti*

Ovid, *Trist.*

Ovid, *Pont.*

Plaut. *Mil.*

Glor.

Pliny, *N.H.*

Pliny, *Epp.*

Porcius Latro

Quint. *Inst.*

Orat.

Quint. *Declam.*

Sall. *Jug.*

Sall. *Ep. ad*

Caes. 1

Sall. *Ep. ad*

Caes. 2

Sall. *Orat. Phil.*

Schol. Bob.

Schol. Gron.

Sen. *Controv.*

Sen. *Suas.*

Sen. *Ben.*

Sen. *Brev. Vit.*

Sen. *Clem.*

Sen. *ad Marc.*

Sen. *Ep.*

Sen. *Octavia*

Servius

Suet. *Caes.*

Suet. *Aug.*

Suet. *Tib.*

Suet. *Calig.*

Suet. *Nero*

Suet. *Galba*

Suet. *Vesp.*

Suet. *De*

Gramm.

P. (?) CORNELIUS TACITUS. <i>Dialogus de Oratoribus</i>	Tac. <i>Dial.</i>
— <i>Annalium ab Excessu Divi Augusti Libri</i>	Tac. <i>Ann.</i>
VALERIUS MAXIMUS. <i>Facta et Dicta Memorabilia</i>	Val. Max.
VELLEIUS PATERCULUS. <i>Historiae Romanae</i>	Velleius, or Vell.
P. VERGILIUS MARO. <i>Aeneis</i>	Vergil, <i>Aen.</i>
(VICTOR). <i>De Viris Illustribus</i>	(Victor), <i>Vir. Ill.</i>

Greek Authors

APPIAN. <i>Bella Civilia</i>	Appian (or App.), <i>B.C.</i>
— <i>Iberica</i>	Appian (or App.), <i>Iber.</i>
— <i>Celtica</i>	Appian (or App.), <i>Celt.</i>
DIO CASSIUS. <i>Roman History</i>	Dio
DIODORUS SICULUS. <i>Library of History</i>	Diod.
DIONYSIUS HALICARNASSENSIS. <i>Antiquitates Romanae</i>	Dionys.
JOSEPHUS. <i>Jewish Antiquities</i>	Josephus, <i>Ant.</i>
NICOLAUS OF DAMASCUS. <i>Vita Caesaris</i>	Nic. Dam. <i>Vit. Caes.</i>
PHILO. <i>Legatio ad Gaium</i>	Philo, <i>Leg. ad Gai.</i>
PLUTARCHUS. <i>Ti. Gracchus</i>	Plut. <i>Ti. Gracch.</i> (or <i>Gracch.</i>)
— <i>C. Gracchus</i>	Plut. <i>C. Gracch.</i> (or <i>Gracch.</i>)
— <i>Pompeius</i>	Plut. <i>Pomp.</i>
— <i>Crassus</i>	Plut. <i>Crass.</i>
— <i>Caesar</i>	Plut. <i>Caes.</i>
— <i>Cato Minor</i>	Plut. <i>Cat. Min.</i>
— <i>Cicero</i>	Plut. <i>Cic.</i>
— <i>Brutus</i>	Plut. <i>Brut.</i>
— <i>Antony</i>	Plut. <i>Ant.</i>
POLYBIUS. <i>Pragmatic Inquiry</i>	Polyb.
STRABO. <i>Geography</i>	Strabo
ZONARUS.	Zon. or Zonarus

(C) EPIGRAPHIC SOURCE

Res Gestae Divi Augusti

Res Gestae

SECTION 2: MODERN WORKS

ALFÖLDI, A. Die Geburt der kaiserlichen Bildsymbolik:
 kleine Beiträge zu ihrer Entstehungsgeschichte. 3.
 Parens patriae:

- I Teil. Die altrömischen und republikanischen Aspekte des Landesvaterbegriffes der Römer. *Museum Helveticum* 9: 204-43, 1952. Alföldi 1
- I Teil, Schluss. *Museum Helveticum* 10: 103-24, 1953. Alföldi 2
- II Teil. Die griechischen, monarchischen und religiösen Aspekte des Landesvaterbegriffes. *Museum Helveticum* 11: 133-69, 1954. Alföldi 3
- ANDERSON, J. G. C. Augustan edicts from Cyrene. *Journal of Roman Studies* 17: 33-48, 1927. Anderson
- ARANGIO-RUIZ, V. La Legislazione. In (*Augustus: studi in occasione del bimillenario Augusteo*. Roma, R. Accademia Nazionale dei Lincei, 1938, 101-46). Arangio-Ruiz
- ARCHI, G. C. Gli studi di diritto penale romano da Ferrini a noi: considerazioni e punti di vista critici. *Revue Internationale des Droits de l'Antiquité* 3: 21-60, 1950. Archi
- ATKINSON, K. M. T. Constitutional and legal aspects of the trials of Marcus Primus and Varro Murena. *Historia* 9: 440-72, 1960. Atkinson
- BADIAN, E. Caepio and Norbanus. *Historia* 6: 318-46, 1957. Badian, *Caepio*
- P. Decius P.f.Subulo: an orator of the time of the Gracchi. *Journal of Roman Studies* 46: 91-96, 1956. Badian, *Decius*
- From the Gracchi to Sulla (1940-1959). *Historia* 11: 197-245, 1962. Badian, *Gracchi*
- BAILEY, C. *Phases in the religion of ancient Rome*. Oxford University Press, 1932. (Sather Classical Lectures 10). Bailey
- BALDUINUS FRANCISCUS. Ad leges majestatis sive perduellionis libri. In (*Jurisprudentia Romana et Attica Heineccii*, Lugd. Batav., vol. 1, 1738). Balduinus Franciscus
- BALSDON, J. P. V. D. Auctoritas, dignitas, otium. *Classical Quarterly* n.s. 11: 43-50, 1961. Balsdon, *Auctoritas*
- Consular provinces under the Late Republic. *Journal of Roman Studies* 29: 57-73, 1939. Balsdon, *Provinces*
- The history of the extortion court at Rome, 123-70 B.C. *Papers of the British School at Rome* (n.s. 1) 14: 98-114, 1938. Balsdon, *Extortion*
- The Ides of March. *Historia* 7: 80-94, 1958.
- BÉRANGER, J. Recherches sur l'aspect idéologique du Principat. *Schweizerische Beiträge zur Altertumswissenschaft* 6, 1953. Béranger
- BESELER, G. *Beiträge zur Kritik der römischen Rechtsquellen*. Tübingen, Mohr (Paul Siebeck), vol. 3, 1913. Beseler
- BLEICKEN, J. Senatsgericht und Kaisergericht: eine Studie zur Entwicklung des Processrechtes im frühen

- Prinzipat. *Abhandlungen der Akademie der Wissenschaften in Göttingen, phil.-hist. Klasse* 3 Folge, Nr. 53, 1962. Bleicken, *Senatsgericht*
- Ursprung und Bedeutung der Provocation. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 89: 324-77, 1959. Bleicken
- BOISSIER, G. *Cicero and his friends: a study of Roman society in the time of Caesar*; transl. by A. D. Jones. London, Innes, 1897. Boissier
- BONNER, S. F. *Roman declamation in the Late Republic and Early Empire*. Liverpool University Press, 1949. Bonner
- BOTSFORD, G. W. *The Roman Assemblies: from their origin to the end of the Republic*. New York, MacMillan, 1909. Botsford
- BRECHT, C. H. *Perduellio: eine Studie zu ihrer begrifflichen Abgrenzung im römischen Strafrecht bis zum Ausgang der Republik. Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 29, 1938. Brecht, *Perduellio*
- *Perduellio und Crimen Maiestatis. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 64: 354-59, 1944. Brecht, *Maiestas*
- *Zum römischen Komitialverfahren. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 59: 261-314, 1939. Brecht, *Komitialverfahren*
- BROUGHTON, T. R. S. *The magistrates of the Roman Republic*. New York, American Philological Association, 1951-52, 2 vols. (Philological Monographs 15). Broughton
- BUCKLAND, W. W. *A manual of Roman Private Law*. Cambridge University Press, 1925. Buckland
- CAMBRIDGE ANCIENT HISTORY. Cambridge University Press. vols. 8 (1930), 9 (1932), 10 (1934). CAH
- CARCOPINO, J. *Autour des Gracques: études critiques*. Paris, Société d'Édition "Les Belles Lettres", 1928. Carcopino, *Gracchi*
- *Cicero: the secrets of his correspondence*; transl. by E. O. Lorimer. London, Routledge & Kegan Paul, 1951, 2 vols. Carcopino, *Cicero*
- CARNEY, T. F. The promagistracy at Rome, 121-81 B.C. *Acta Classica* 2: 72-77, 1959. Carney
- CARSON, R. A. G. Caesar and the monarchy. *Greece and Rome* 2 ser. 4: 10-17, 1957. Carson
- CHILTON, C. W. The Roman law of treason under the Early Principate. *Journal of Roman Studies* 45: 73-81, 1955. Chilton
- CHURCH, A. J. and BRODRIBB, W. J., eds. *The complete works of Tacitus*; transl. by A. J. Church and W. J. Brodribb. New York, Modern Library, 1942. Church and Brodribb

- CIACERI, E. L'Imperatore Tiberio e i Processi di Lesa Maestà. In (*Processi Politici e Relazioni Internazionali*. Roma, Nardecchia, 1918, 249-308). Ciaceri
- CLARK, A. C., ed. *Q. Asconii Pediani: orationum Ciceronis quinque enarratio*; recognovit brevisque adnotatione critica instruxit Albertus Curtis Clark; repr. Oxford University Press, 1950. Asconius-C, or Ascon.-C.
- COBBAN, J. M. *Senate and provinces: 78-49 B.C.* Cambridge University Press, 1935. Cobban
- COLI, U. Sur la notion d'imperium en droit public romain. *Revue Internationale des Droits de l'Antiquité* 3 sér. 7: 361-87, 1960. Coli
- COLLINS, J. H. Caesar and the corruption of power. *Historia* 4: 445-65, 1955. Collins, *Caesar*
- Review of M. Rambaud, L'art de la déformation historique dans les Commentaires de César. *Gnomon* 26: 527-33, 1954. Collins, *Review of Rambaud*
- CUFF, P. J. The terminal date of Caesar's Gallic command. *Historia* 7: 445-71, 1958. Cuff
- DAUBE, D. *Forms of Roman legislation*. Oxford, Clarendon Press, 1956. Daube
- DE FRANCISCI, P. La costituzione Augustea. In (*Augustus: studi in occasione del bimillenario Augusteo*. Roma, R. Accademia Nazionale dei Lincei, 1938, 61-100) De Francisci
- DESSAU, H. *Geschichte der römischen Kaiserzeit*. Berlin, Weidmannsche Buchhandlung, 1924-30, 2 vols in 3. Dessau
- ed. *Inscriptiones Latinae Selectae*; edidit Hermannus Dessau. Berolini, Weidmann, 1892-1916, 3 vols in 5. ILS
- DITTENBERGER, W. *Sylloge Inscriptionum Graecarum*; a Guilelmo Dittenbergero condita et aucta; 3 ed. Leipzig, Hirzel, 1915-24, 4 vols. Dittenberger
- DREXLER, H. Maiestas. *Aevum* 30: 195-212, 1956. Drexler
- DUMÉZIL, G. Maiestas et Gravitas: de quelques différences entre les Romains et les Austronésiens. *Revue de Philologie* 26: 7-28, 1952. Dumézil
- EDWARD, W. A. *The Suasoriae of Seneca the Elder*. Cambridge University Press, 1928. Edward
- EHRENBERG, V. and JONES, A. H. M., comps. *Documents illustrating the reigns of Augustus & Tiberius*; collected by V. Ehrenberg and A. H. M. Jones; 2 ed. Oxford, Clarendon Press, 1955.
- ERWINS, U. Ne quis iudicio circumveniat. *Journal of Roman Studies* 50: 94-107, 1960. Erwins
- FERRABINO, A. L'Imperatore Cesare Augusto. In (*Augustus: studi in occasione del bimillenario Augusteo*. Roma, R. Accademia Nazionale dei Lincei, 1938, 1-59). Ferrabino

- FLORE, G. Di alcuni casi di vis publica. In (*Studi in onore di Pietro Bonfante nel XL anno d'insegnamento*. Milano, Fratelli Treves Editori, vol. 4, 1930, 335-52).
- FRAENKEL, E. Review of F. Beckmann, *Zauberei und Recht in Roms Frühzeit*. *Gnomon* 1: 185-200, 1925.
- FRANK, T. *Roman imperialism*. New York, MacMillan, 1929.
- FURNEAUX, H., ed. *The Annals of Tacitus*; ed. with introd. and notes by H. Furneaux; 2 ed. repr. Oxford, Clarendon Press, 1956.
- GAUDEMET, J. L'empereur, interprète du droit. In (*Festschrift für Ernst Rabel*. Tübingen, Mohr [Paul Siebeck], vol. 2, 169-203, 1954).
- Il senato e il principe. *Labeo: Rassegna di Diritto Romano* 4: 335-40, 1958.
- GELZER, M. *Caesar der Politiker und Staatsmann*. Wiesbaden, Steiner Verlag, 1960.
- GIRARD, P. F. *Histoire de l'organisation judiciaire des Romains*. Paris, Rousseau, 1901.
- Les Leges Iuliae Iudiciorum. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 34: 295-372, 1913.
- GLOTZ, G. *The Greek city and its institutions*; repr. London, Routledge & Kegan Paul, 1950.
- GONIN, H. L. Perduellio. *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 14: 1-33, 1951.
- GRANT, M. *From Imperium to Auctoritas: a historical study of Aes coinage in the Roman Empire, 49 B.C.-A.D. 14*. Cambridge University Press, 1946.
- GREENIDGE, A. H. J. The conception of treason in Roman Law. *Juridical Review* 7: 228-40, 1895.
- A history of Rome from the tribunate of Tiberius Gracchus to the end of the Jugurthine war, B.C. 133-104*. London, Methuen, 1904.
- The legal procedure of Cicero's time*. Oxford, Clarendon Press, 1901.
- Roman Public Life*. London, MacMillan, 1911.
- and CLAY, A. M., eds. *Sources for Roman history, 133-70 B.C.*; collected and arranged by A. H. J. Greenidge and A. M. Clay; 2 ed. rev. by E. W. Gray. Oxford, Clarendon Press, 1960.
- GUNDEL, H. G. Der Begriff Maiestas im politischen Denken der römischen Republik. *Historia* 12: 281-320, 1963.
- Flore
Fraenkel,
Review of
Beckmann
- Furneaux
- Gaudemet
- Gelzer
Girard,
Organisation
- Girard, Leges
- Glötz
- Gonin
- Grant
Greenidge,
Treason
- Greenidge,
History
- Greenidge,
Procedure
Greenidge,
Public Life
- Greenidge &
Clay
- Gundel

- HAMMOND, M. *The Augustan Principate in theory and practice during the Julio-Claudian period*. Cambridge (Mass), Harvard University Press, 1933. Hammond
- HANSLIK, R. Horaz und Varro Murena. *Rheinisches Museum für Philologie* 96: 282-87, 1953. Hanslik, Murena
- HARDY, E. G. *Six Roman laws*; transl. with introd. and notes by E. G. Hardy. Oxford, Clarendon Press, 1911. Hardy, *Lex*
- Notes on the Lex Judiciaria of G. Gracchus, the Lex Servilia of Caepio and the Lex Thoria. *Journal of Philology* 32 (63), 96-106, 1912. *Judiciaria*
- ed. *The Monumentum Ancyranum*; ed by E. G. Hardy. Oxford, Clarendon Press, 1923. Hardy
- HAYAKAWA, S. I. *Language in thought and action*. London, Allen & Unwin, 1952. Hayakawa
- HEITLAND, W. E. *The Roman Republic*. Cambridge University Press, 1909, 3 vols. Heitland
- HENDERSON, M. I. The process 'De Repetundis'. *Journal of Roman Studies* 41: 71-88, 1951. Henderson
- HEUSS, A. Zur Entwicklung des Imperiums der römischen Oberbeamten. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 64: 57-133, 1944. Heuss
- HILDEBRANDT, P. ed. *Scholia in Ciceronis Orationes Bobiensia*; ed. Paulus Hildebrandt. Leipzig, Teubner, 1907. *Schol. Bob.*
- HITZIG, H. F. *Die Herkunft des Schwurgerichts im römischen Strafprozess*. Zurich, 1909. Hitzig
- HOHL, E. Besass Cäsar Tribunengewalt? *Klio: Beiträge zur alten Geschichte* n.f. 14: 61-75, 1939. Hohl, Caesar
- Zu den Testamenten des Augustus. *Klio: Beiträge zur alten Geschichte* n.f. 12: 323-42, 1937. Hohl, Augustus
- HOLMES, T. Rice E. *Caesar's conquest of Gaul*; 2 ed. Oxford, Clarendon Press, 1911. Rice Holmes, Gaul
- The Roman Republic and the founder of the Empire*. Oxford University Press, 1923, 3 vols. Rice Holmes, Republic
- HOMO, L. *Roman political institutions from city to state*. London, Kegan, Paul, Trench, Trubner, 1929. Homo
- INSTINSKY, H. U. *Sicherheit als politisches Problem des römischen Kaisertums*. Baden-Baden (Deutsche Beiträge zur Altertumswissenschaft 3, 1952). Instinsky
- JACOBY, F. *Die Fragmente der Griechischen Historiker*. vol. 2. Zeitgeschichte. A. Universalgeschichte und Hellenika. Berlin, Weidmann, 1926. Jacoby
- JOLOWICZ, H. F. *Historical introduction to the study of Roman Law*; 2 ed. Cambridge University Press, 1939. Jolowicz

- JONES, A. H. M. Imperial and senatorial jurisdiction in the Early Principate. *Historia* 3: 464-88, 1954-55.
 —The Imperium of Augustus. *Journal of Roman Studies* 41: 112-19, 1951. Jones, *Jurisdiction*
 Jones, *Augustus*
- JONES, H. Stuart. A Roman law concerning piracy. *Journal of Roman Studies* 16: 155-73, 1926. Stuart Jones
- JÖRS, P. *Römisches Privatrecht*: auf Grund des Werkes von Paul Jörs in zweiter Auflage neu bearbeitet von Dr Wolfgang Kunkel; 3 ed. Berlin, Springer-Verlag, 1949. Jörs
- KASER, M. *Das römische Privatrecht*. Erster Abschnitt: das altrömische, das vorklassische und klassische Recht. München, Beck, 1955. (Handbuch der Altertumswissenschaft, Abt. 10, Teil 3, Band 3, 1). Kaser
- KELLY, J. M. *Princeps Iudex; eine Untersuchung zur Entwicklung und zu den Grundlagen der kaiserlichen Gerichtsbarkeit*. Weimar, Bohlau, 1957. (Forschungen zur römischen Recht, 9. Abhandlung). Kelly
- KOESTERMANN, E. Die Majestätsprozesse unter Tiberius. *Historia* 4: 72-106, 1955. Koestermann
- KOLBE, W. Vom Werden des Prinzipates. *Klio: Beiträge zur alten Geschichte* n.f. 16: 26-44, 1944. Kolbe
- KRÜGER, P. *Geschichte der Quellen und Litteratur des römischen Rechts*; 2 ed. München, Duncker & Humblot, 1912. Krüger
 Kübler
- KÜBLER, B. Maiestas. *RE* 14.1. 542-59.
- KUNKEL, W. Bericht über neuere Arbeiten zur römischen Verfassungsgeschichte III. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 75: 302-52, 1958. Kunkel
- KYTZLER, B. Matius und Cicero. *Historia* 9: 96-121, 1960. Kytzler
- LÄMMLI, F. Sallusts Stellung zu Cato, Caesar, Cicero. *Museum Helveticum* 3: 94-117, 1946. Lämmlli
- LAISTNER, M. L. W. *The Greater Roman Historians*. Berkeley, University of California Press, 1947. (Sather Classical Lectures 21). Laistner
- LAQUEUR, R. Kaiser Augustus und der Delator. *Hermes* 67: 237-40, 1932. Laqueur
- LEAR, F. S. Treason and related offences in Roman and Germanic law. *Rice Institute Pamphlet* 42, 2 (Monograph in Political Science), 1955. Lear
- LENEL, O., ed. *Palingensia Iuris Civilis*; arranged and edited by O. Lenel. Leipzig, Tauchnitz, 1889. Lenel
- LENGLE, J. *Römisches Strafrecht bei Cicero und den Historikern*. Leipzig, Teubner, 1934. (Neue Wege zur Antike, 1. Reihe: Darstellungen, Heft 11). Lengle, *Straf*

- Die Verurteilung der römischen Feldherrn von Arausio. *Hermes* 66: 302-16, 1931.
- LEVI, M. A. *Il tempo di Augusto*. Firenze, La Nuova Italia, 1951. (Storici Antichi e Moderni, n.s. 7).
- LEVY, E. Paulus und der Sentenzenverfasser. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 50: 272-94, 1930.
- Die römische Kapitalstrafe. *Sitzungsberichte der Heidelberger Akademie der Wissenschaften, phil.-hist. Klasse* 5. Abhandlung, 1930-31.
- LEWIS, C. T. and SHORT, C. *A Latin dictionary*. Oxford, Clarendon Press, 1958.
- LONG, G. M. *Tullii Ciceronis Orationes*; with a commentary by G. Long. London, Whittaker, vol. 4, 1858.
- McFAYDEN, D. The rise of the Princeps' jurisdiction within the city of Rome. *Washington University Studies, Humanistic Series* 10 (2) 181-264, 1923.
- MARSH, F. B. *A history of the Roman world from 146 to 30 B.C.*; rev. with additional notes by H. H. Scullard. London, Methuen, 1953.
- The reign of Tiberius*; repr. Cambridge, Heffer, 1959.
- MATTHAEI, L. E. On the classification of Roman allies. *Classical Quarterly* 1: 182-204, 1907.
- MATTHAEUS, A. *De criminibus: ad Lib XLVII et XLVIII Dig. Commentarius*. Waesberge, Typis Ioannis, 1644.
- MATTINGLY, H. B. Naevius and the Metelli. *Historia* 9: 414-39, 1960.
- MERRILL, E. T. Some remarks on cases of treason in the Roman Commonwealth. *Classical Philology* 13: 34-52, 1918.
- MOMIGLIANO, A. Review of L. Robinson, Freedom of speech in the Roman Republic. *Journal of Roman Studies* 32: 120-24, 1942.
- MOMMSEN, Th. *The history of Rome*; transl. by W. P. Dickson. London, Bentley, 1894.
- Römisches Staatsrecht*. Basel, Schwabe, 1952, 3 vols in 5. (Unveränderter photomechanischer Nachdruck der dritten Auflage).
- Römisches Strafrecht*. Graz-Austria, Akademische Druck-U. Verlagsanstalt, 1955. (Unveränderter photomechanischer Nachdruck der 1899 erschienen Ausgabe).
- and KRÜGER, P. *Corpus Iuris Civilis*. Berlin, Weidmann, vol. 1, 1928, Institutiones, recognovit Paulus Krüger; Digesta, recognovit Theodorus Mommsen.
- Lengle, *Arausio*
- Levi, or
Levi, *Augusto*
- Levy, *Paul*
- Levy
- Lewis and Short
- Long
- McFayden
- Marsh-
Scullard
- Marsh,
Tiberius
- Matthaeus
- Mattingly
- Merrill
- Momigliano,
Review of
Robinson
- Mommsen,
History
- Mommsen,
Staat
- Mommsen,
Straf

- sen, retractavit Paulus Krüger. vol. 2, 1929, Codex Iustinianus, recognovit et retractavit Paulus Krüger.
- MÜNZER, F. Norbanus. *Hermes* 67: 220-36, 1932. Mommsen-Krüger
Münzer,
Norbanus
- NICCOLINI, G. *Il Tribunato della Plebe*; Ulrico Hoepli editore. Milano, Librario della Real Casa, 1932. Niccolini
- NICHOLAS, B. *An introduction to Roman Law*. Oxford, Clarendon Press, 1962.
- NORWOOD, F. The riddle of Ovid's Relegatio. *Classical Philology* 58 (3) 150-63, 1963. Norwood
- OXFORD CLASSICAL DICTIONARY, repr. Oxford, Clarendon Press, 1950. OCD
- PAIS, E. *Ancient legends of Roman history*. London, Sonnenschein, 1906.
- PELHAM, H. F. *Essays*; collected and arranged by F. Haverfield. Oxford, Clarendon Press, 1911. Pelham
- POCOCK, L. G. *A commentary on Cicero in Vatinius; with an historical introduction and appendices*. University of London Press, 1926. Pocock
- POLLACK, E. *Der Majestätsgedanke im römischen Recht: eine Studie auf dem Gebiet des römischen Staatsrechts*. Leipzig, Veit, 1908. Pollack
- PREMERSTEIN, A. von. Vom Werden und Wesen des Prinzipats; aus dem Nachlass herausgegeben von H. Volkmann. *Abhandlungen der bayerischen Akademie der Wissenschaften, phil.-hist. Abteilung* n.f. 15, 1937. Premierstein
- RAMBAUD, M. L'art de la déformation historique dans les Commentaires de César. Paris, "Les Belles Lettres", 1953. (Annales de l'Université de Lyon, 3e sér., Lettres, Fasc. 23). Rambaud
- REAL-ENCYCLOPÄDIE DER CLASSISCHEN ALTERTUMSWISSENSCHAFT, A. Pauly, G. Wissowa and W. Kroll, eds. Stuttgart, 1894-. RE
- REID, J. S. On some questions of Roman public law. *Journal of Roman Studies* 1: 68-99, 1911.
- REIN, W. *Das Criminalrecht der Römer von Romulus bis auf Justinianus*. Leipzig, Köhler, 1844. Rein
- RICCOBONO, S. and others eds. *Fontes Iuris Romani Antejustiniani*; ed. by S. Riccobono [and others]; 2 ed. Firenze, Barbera, pt. 2, 1940. Riccobono
- RICE HOLMES see HOLMES, T. RICE E.
- ROGERS, R. S. *Criminal trials and criminal legislation under Tiberius*. Middletown (Conn.), American Philological Association, 1935. (Philological Monographs 6). Rogers, *Trials*
- Treason in the Early Empire. *Journal of Roman Studies* 49: 90-94, 1959. Rogers, *Treason*

- ROOS, A. G. *Comitia Tributa-Concilium Plebis, Leges-Plebiscita. Mededeelingen der Koninklijke Nederlandsche Akademie van Wetenschappen, Afd. Letterkunde* n.r. 3 (6), 1940. Roos
- ROTONDI, G. *Leges Publicae Populi Romani: elenco cronologico con una introduzione sull'attività legislativa dei comizi romani*. Milano, Società Editrice Libraria, 1912. Rotondi
- SALMON, E. T. The evolution of Augustus' Principate. *Historia* 5: 456-78, 1956. Salmon
- SANTA CRUZ, J. Der Einfluss der rhetorischen Theorie der Status auf die römische Jurisprudenz, insbesondere auf die Auslegung der Gesetze und Rechtsgeschäfte. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 75: 91-115, 1958. Santa Cruz
- SATTLER, P. *Augustus und der Senat: Untersuchungen zur römischen Innenpolitik zwischen 30 und 17 v. Christus*. Göttingen, Vandenhoeck & Ruprecht, 1960. Sattler
- SCHELTEMA, H. J. Les sources du droit de Justinien dans l'Empire d'Orient. *Revue Historique de Droit Français et Étranger* 4 sér, 30 année, 1-17, 1952.
- SCHILLER, A. A. The jurists and the praefects of Rome. *Revue Internationale des Droits de l'Antiquité* 2: 319-59, 1949. Schiller
- SCHISAS, P. M. *Offences against the State in Roman Law and the courts which were competent to take cognisance of them*. University of London Press, 1926. Schisas
- SCHLESINGER, A. C. ed. *Livy*; edited by A. C. Schlesinger. London, Heinemann, 1951. (Loeb edition). Schlesinger
- SCHMITTLEIN, R. *La première campagne de César contre les Germains 58 avant Jésus-Christ*. Paris, Presses Universitaires de France, 1954. (Travaux et Mémoires des Instituts Français en Allemagne 6). Schmittlein
- SCHÖNBAUER, E. Das Gesetzesfragment aus Tarent in neuer Schau. *Iura (Rivista Internazionale di Diritto Romano e Antico)* 7: 92-117, 1956. Schönbauer
- SCHULZ, F. *Classical Roman Law*. Oxford, Clarendon Press, 1951. Schulz,
Classical Law
- *History of Roman Legal Science*. Oxford, Clarendon Press, 1946. Schulz, *Legal Science*
- *Principles of Roman Law*; transl. from a text rev. and enl. by the author, by Marguerite Wolff. Oxford, Clarendon Press, 1936. Schulz, *Principles*
- SCHUR, W. Das sechste Consulat des Marius. *Klio: Beiträge zur alten Geschichte* n.f. 13: 313-22, 1938. Schur
- SCULLARD, H. H. *A history of the Roman world from 753 to 146 B.C.* London, Methuen, 1935. Scullard

- SHERWIN-WHITE, A. N. The extortion procedure again. *Journal of Roman Studies* 42: 43-55, 1952.
- *The Roman Citizenship*. Oxford, Clarendon Press, 1939.
- Violence in Roman politics. *Journal of Roman Studies* 46: 1-9, 1956.
- SHUCKBURGH, E. S., transl. *The letters of Cicero: the whole extant correspondence in chronological order*; transl. into English by Evelyn S. Shuckburgh, London, Bell, 1899.
- SIBER, H. Analogie, Amtsrecht und Rückwirkung im Strafrechte des römischen Freistaates. *Abhandlungen des phil.-hist. Klasse der sächsischen Akademie der Wissenschaften* 43 (3), 1936.
- *Provocatio*. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 62: 376-91, 1942.
- Review of G. Pugliese, *Appunti sui limiti dell'imperium nella repressione penale a proposito della lex Iulia de vi publica*. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 62: 413-21, 1942.
- Review of F. Vittinghoff, *Der Staatsfeind in der römischen Kaiserzeit*. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 58: 276-83, 1938.
- *Römisches Verfassungsrecht in geschichtlicher Entwicklung*. Lahr, Schauenburg, 1952.
- SMITH, R. E. The conspiracy and the conspirators. *Greece and Rome* 2 ser., 4: 58-70, 1957.
- The law of libel at Rome. *Classical Quarterly* 45: 169-79, 1951.
- SPEYER, W. Zur Verschwörung des Cn. Cornelius Cinna. *Rheinisches Museum für Philologie* n.f. 99: 277-84, 1956.
- STRACHAN-DAVIDSON, J. L. *Problems of the Roman Criminal Law*. Oxford, Clarendon Press, 1912, 2 vols.
- STRACK, P. L. Zur tribunicia potestas des Augustus. *Klio: Beiträge zur alten Geschichte* n.f. 14: 358-81, 1939.
- STROUX, J. and WENGER, L. Die Augustus-Inschrift auf dem Markplatz von Kyrene. *Abhandlungen der bayerischen Akademie der Wissenschaften, phil.-philologische und historische Klasse* 34 (2), 1928.
- STUART S AVELEY, E. *Provocatio* during the fifth and fourth centuries B.C. *Historia* 3: 412-28, 1954-55.
- SYME, R. *Imperator Caesar: a study in nomenclature*. *Historia* 7: 172-88, 1958.
- Sherwin-White, *Extortion*
- Sherwin-White, *Citizenship*
- Sherwin-White, *Violence*
- Shuckburgh
- Siber, *Analogie*
- Siber, *Provocatio*
- Siber, *Review of Vittinghoff*
- Siber, *Verfassung*
- Smith
- Speyer
- Strachan-Davidson
- Strack
- Stroux-Wenger
- Stuart Staveley
- Syme, *Imperator*

- The Roman Revolution*; repr. Oxford University Press, 1956. Syme
- TÄUBLER, E. *Imperium Romanum: Studien zur Entwicklungsgeschichte des römischen Reichs*. Leipzig, Teubner, vol. 1. Die Staatsverträge und Vertragsverhältnisse, 1913. Täubler
- TAYLOR, Lily Ross. *The divinity of the Roman emperor*. Middletown (Conn.), American Philological Association, 1931. (Philological Monographs 1). Taylor, *Divinity*
- On the chronology of Caesar's first consulship. *American Journal of Philology* 72: 254-68, 1951. Taylor, *Chronology*
- Party politics in the age of Caesar*. Berkeley, University of California Press, 1949. (Sather Classical Lectures 22). Taylor, *Politics*
- TYRRELL, R. Y. and PURSER, L. C. *The correspondence of M. Tullius Cicero*. London, Longmans, Green, 1890. Tyrrell and Purser
- VAN WARMELO, P. À propos de la compilation du Digeste. *Revue Historique de Droit Français et Étranger* 4 sér., 38 année, 503-29, 1960. Van Warmelo
- VILLERS, R. Le dernier siècle de la République romaine: réflexions sur la dualité des pouvoirs. *Droits de l'Antiquité et Sociologie Juridique*, 1959, 307-16. Villers
- VOLKMANN, H. Zur Rechtsprechung im Principat des Augustus: historische Beiträge. *Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 21, 1935. Volkmann
- VOLTERRA, E. Processi penali contro i defunti in diritto romano. *Revue Internationale des Droits de l'Antiquité* 2: 485-500, 1949. Volterra
- VON FRITZ, K. Leges sacrae and plebei scita. In (*Studies presented to David Moore Robinson*. St. Louis [Missouri], Washington University, vol. 2, 893-905, 1953.) Von Fritz
- WAGENVOORT, H. *Roman dynamism: studies in ancient Roman thought, language and custom*. Oxford, Blackwell, 1947. Wagenvoort
- WALSER, G. Der Prozess gegen Q. Ligarius im Jahre 46 v. Chr. *Historia* 8: 90-96, 1959. Walser
- WARMINGTON, E. H., ed. *Remains of Old Latin*; newly ed. and transl. by E. H. Warmington. London, Heinemann, vol. 4, 1940 (Loeb Classical Library). Warmington

- WENGER, L. *Die Quellen des römischen Rechts*. Wien, Holzhausen, 1953. Wenger
- Review of E. Pollack, *Der Majestätsgedanke im römischen Recht. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 30: 485-87, 1909. Wenger, Review of Pollack
- WICKERT, L. Review of Béranger, *Recherches sur l'aspect idéologique du principat. Gnomon* 26: 534-44, 1954. Wickert, Review of Béranger
- Review of von Premerstein, *Vom Werden und Wesen des Prinzipats. Klio: Beiträge zur alten Geschichte* n.f. 14: 331-38, 1939. Wickert, Review of Premerstein
- WICKHAM, E. C. *The works of Horace*; with a commentary by E. C. Wickham. Oxford, Clarendon Press, vol. 1, 1896. Wickham
- WILLIAMS, W. Glynn, ed. *Cicero: the letters to his friends*. London, Heinemann, 1927. (Loeb Classical Library). Glynn Williams
- WLASSAK, M. *Anklage und Streitbefestigung im Kriminalrecht der Römer. Kais. Akademie der Wissenschaften in Wien, phil.-hist. Klasse, Sitzungsberichte* 184 (1), 1917. Wlassak, Anklage
- Römische Prozessgesetze*. Leipzig, Duncker and Humblot, vol. 1, 1888; vol. 2, 1891. Wlassak, Process
- WOLFF, H. J. Review of Schulz, *History of Roman Legal Science. American Journal of Philology* 71: 73-78, 1950. Wolff
- YARNOLD, E. J. *The Latin law of Bantia. American Journal of Philology* 78: 163-72, 1957. Yarnold
- ZUMPT, A. W. *Das Criminalrecht der römischen Republik*. Berlin, Dümmler, 1865-69, 2 vols. in 4. Zumpt

Index

- Accused, death of, 287f.
Adultery and *crimen maiestatis*, 198ff., 234f., 240ff.
Aediles, 21 n.10
Affectatio regni, 153
Agrippa, M. Vipsanius, 177, 180, 192, 207
Agrippa Postumus, 242, 243 nn.134, 135, 253
Agrippina, 227, 234f.
Albinus, A. Postumius, 36
Ambitus, 24, 116f., 247ff.
Antistius, L., 94, 103
Antonius, Iullus, trial of, 198ff., 234, 241. *See also* Julia, the elder
Antonius, M. (*cos.* 99 B.C.), 40, 45f., 50ff., 150
Antonius, M. (*IIIvir*), 149, 160f., 164, 166f., 175, 177ff., 218f., 223
 Conspiracy against Caesar by, 141f.
 Legislation of, 155ff., 164ff.
 Quaestorship of, 100f.
Appuleia Varilla, trial of, 232, 234f.
Arausio, defeat at, 39, 42, 46, 52, 109
Ariovistus, 109f.
Asellus, Ti. Claudius, 215
Asprenas Nonius, 257f.
Astrologers, consultation of, 291f.
Athenian magistrates, prosecution of, 22 n.12
Atticus, T. Pomponius, 98
Attilii, the, 23
Auctoritas, 208ff.
Augustus, the Emperor, 171ff. and *pass.*
 Arbitration of war and peace of, 274
 Auctoritas of, 208ff.
 Caesar's memory, and, 269 n.13
 Conspiracies against, 171ff., 199ff., 260f.
 Defamation, and, 251ff.
 Domestic tribunal of, 180ff., 203, 231ff.
 House of, 207, 220, 226ff., 237ff.
 Imperium of, 208, 278f.

- Magisterial status of, 206f., 211 n.40
Maiestas legislation of. *See Maiestas* legislation s.v. *Lex Julia Maiestatis* (Augustus)
 Majesty of. *See* Majesty of Augustus, the
 Public criminal court of, 231ff., 260
- Bithynicus, Q. Pompeius, 99
 Bulbus, M. Atilius, 80f.
- Caecilius, 98
 Caecina, A., 251
 Caepio, Fannius, trial of, 183f., 187ff.
 Caepio, Q. Servilius (sen.), 38f., 42
 Trials of, 41ff., 46, 65
 Caepio, Q. Servilius (jun.), 39f., 61ff., 87
 Trial of, 41, 45, 46f., 53, 72
 Caesar, C. Iulius, 32, 93ff. *pass.*, 160ff.
 Anticato of, 153f.
 Bellum Africum and, 126, 134f.
 Bellum Alexandrinum and, 134f.
 Bellum Civile of, 126ff.
 Bellum Gallicum of, 105ff., 115ff., 121ff.
 Bellum Hispaniense and, 134f.
 Defamation, and, 250f.
 Dictatorship of, 139 n. 99
 Dignitas of, 118ff.
 Discretion in war and peace of, 136
 Divine honours of, 136f.
 First agrarian law of, 93 n.1, 96f.
 Maiestas contraventions by, 93, 116f., 153 n. 44
 First consulship, during, 94ff., 101ff.
 Gaul, in, 105ff.
 Maiestas legislation of. *See Maiestas* legislation s.v. *Lex Hirtia, Lex Julia Maiestatis* (Caesar)
 Oath for protection of, 137ff., 236
 Pater patriae, as, 137ff., 236
 Tribunician power of, 139 n. 99
 Caesar, C. Iulius Octavianus. *See* Augustus, the Emperor
Calumnia, 249f.
 Calvinus, Domitius, 135, 151
 Calvus, C. Licinius Macer, 251
 Capital Sentence, 18, 20, 22, 65f., 93 n.1, 176, 189, 205
 Cassius Severus, trial of, 246, 250, 255, 257ff., 264f., 270
 Catiline, conspiracy of, 37, 218, 223
 Cato, M. Porcius, 103, 104 n.31, 113, 116, 153f.
 Catullus, 251
 Cestius Pius, 257

Cicero, *pass.*

Cornelius, defence of, 72ff.

Deiotarus, defence of, 148ff., 151f.

Gabinus, defence of, 77

Gabinus, prosecution of, 76f.

Ligarius, defence of, 143ff.

Marcellus, defence of, 140ff.

Quaestio Variana, attendance at, 63

Cinna, L. Cornelius, 195f.

Cinna, L. (or Cn.) Cornelius, trial of, 193ff., 233 n.109

Classicus, Caecilius, 88

Claudia Pulchra, trial of, 234f.

Claudia, trial of, 28f., 48, 88, 250

Claudius, Appius, 79, 247f.

Claudius, Appius, trial of, 198ff. *See also* Julia, the elder

Clientela, 137ff., 222ff., 236ff.

Clodius, P., 95, 101, 103, 104 n.31

Coercitio, 18, 174, 214f.

Comitia Centuriata, capital jurisdiction of, 18, 20f., 26f.

Comitia Tributa, 18, 26, 28, 30, 32

Maiestas trials in, 27ff., 38, 42ff., 48, 61ff., 103

Pecuniary jurisdiction of, 18

Concilium Plebis, 26 n. 17

Considius Longus, 142

Considius, Q., 209

Cordubensis, A. Aelianus, 251

Cornelius, C., trial of, 71ff., 82f., 98

Corona, P. Silicius, 175

Cremutius Cordus, trial of, 268ff.

Crimen de vi and *crimen maiestatis*, 87, 221, 281f.

Crimen imminutae maiestatis tribuniciae. *See* Tribunes, s.v. *Maiestas* of

Crimen laesarum religionum, 199, 206, 212, 227f., 232f., 240f.

Crimen maiestatis, *pass.* *See also* Augustus, the Emperor s.v. *Conspiracies* against; Caesar, C. Iulius s.v. *Maiestas* contraven-
tions by; *Comitia Tributa* s.v. *Maiestas* trials in;
Maiestas legislation; *Maiestas Populi Romani*;
Quaestio Maiestatis; Tribunes s.v. *Rechtschäfts-*
prozess of

Adultery, and, 198ff., 234f., 240ff.

Apud populum, cases of, 27ff., 38, 42ff., 48, 61ff., 103

Crimen de vi and, 87, 221, 281f.

Crimen repetundarum, and, 85ff.

Crimen violatae maiestatis, and, 210ff., 226ff., 240ff.

'Dangerous neighbours', and, 105f., 108f.

Defamation, and, 246ff., 269

'Definition' of, 14, 88f.

Earliest case of, 27, 29

- Greek renderings of, 1
- 'Invention' of, 16
- Judicial corruption, not applicable to, 80f.
- Magistrates and senators, confined to, 87f.
- Mourning for those convicted of, 206
- Origin of, 23ff., 220ff.
- Perduellio*, and, 16ff., 20f., 25ff., 32f.
- Praetors, and, 82
- Crimen maiestatis imminutae*. See *Crimen maiestatis*
- Crimen repetundarum*, 23f., 88, 88 n. 74
- Crimen maiestatis*, and, 85ff.
- Crimen violatae maiestatis*, 199, 206, 212, 228, 231ff., 239ff., 291
- Crispinus, Quintus, trial of, 198ff. See also Julia, the elder
- Cura legum morumque*, 276
- Cura rei publicae universa*, 226 n.89
- Curio, C. Scribonius, 124 n.23
- Death Sentence. See Capital Sentence
- Decianus, C. Appuleius, trial of, 47f.
- Defamation, 246ff.
- Deiotarus, trial of, 148ff.
- Demosthenes, trial of, 198ff. See also Julia, the elder
- Deprecatio*, 146ff.
- Dignitas*, 10, 118f. See also Caesar, C. Iulius, s.v. *Dignitas* of
- Dolabella, P. Cornelius, 160f., 172f.
- Domitius, L., 172
- Drusus, M. Livius, 215, 223, 225
- Duumviri perduellionis*, 26, 32
- Emperor, statues of, 290ff.
- Epicurius, L. Varus, 257
- Exile, compulsory, 66, 93, 176
- Exile, voluntary, 65ff., 93, 176
- Extortion. See *Crimen repetundarum*
- Fabius Maximus, Paullus, 259
- Favonius, M., 98
- Fines. See *Multae inrogatio*
- Flaccus, Cn. Fulvius, 30
- Flaminius, C., 31, 215
- Flaminius, L. Quinctius, 11, 31f.
- Flavus, Caesetius, 152f.
- Freedom of speech. See *Crimen maiestatis* s.v. Defamation, and
- Fuscus, Claudius, 88
- Gabinus, A., trial of, 76f., 87, 249
- Gabinus, Antiochus, trial of, 77ff.

- Gaius, the Emperor, 217, 223f.
 Oaths to, 223f.
 Oaths to sisters of, 224. n. 84
 Vestal rights of sisters of, 217
- Galba, Ser. Sulpicius, 23
- Gallius, Q., trial of, 173ff.
- Gallus, C. Cornelius, trial of, 180ff.
- Glabrio, M. Acilius, 23
- Glaucia, C. Servilius, 46, 50
- Gracchus, C. Sempronius, 36, 48
- Gracchus, Sempronius, trial of, 198ff. *See also* Julia, the elder
- Gracchus, Ti. Sempronius (*cos.* 177 B.C.), 20, 216
- Gracchus, Ti. Sempronius (*tr.* 133 B.C.), 48, 216
- Herennius, C., 230
- Herodes Agrippa, 243 n.134
- Horatius, trial of, 20, 26, 26 n.15
- Hostis, 125, 178, 224, 272 n.24. *See also* *Senatusconsultum* s.v. *Ultimum*
 'House of Caesar', 207, 220, 226ff., 237ff. *See also* Majesty of Augustus, the
- Icilius, 221
- Imperium*, 208, 278f.
- Impietas*, 227f.
- Informers, awards to, 261, 264
- Inimicus*, 121, 125, 224
- Iudices*, 24
- Iudicia populi*, judicial functions of, 18f.
- Iudicia publica*, 23f. *See also* *Quaestiones perpetuae*
- Iunius Novatus, 252
- Judicatio*, 18
- Julia, the elder, 198ff., 228, 231, 233, 240f.
 Allegations against, 198ff.
 Plot for the rescue of, 201
 Punishment of, 199ff.
 Trial of, irregularities in, 204f.
 Trial of, procedure at, 203, 231ff.
 Trial of, significance of, 228, 233, 240ff.
- Julia, the younger, trial of, 242f.
- Jurors. *See* *Iudices*
- Jury courts. *See* *Quaestiones perpetuae*
- Labeo, C. Atinius, 215
- Labienus, T., 255, 265, 271
- Lacutanius Phileros, P., 290ff.
- Laenas, C. Popilius, 38, 108
- Laws, extensive interpretation of, 72ff., 83, 172, 176, 179, 182f.
- Laws, nomenclature of, 96 n.11, 168, 282f.

Leges:

- 'Law of Romulus', 34 n.1
Leges Aelia et Fufia, 95, 97
Leges maiestatis. See *Maiestas* legislation
Leges Porciae, 155 n.5
Lex Acilia, 54, 56, 69
Lex Caecilia Didia, 95, 97
Lex Caelia, 31
Lex Calpurnia repetundarum, 23, 69
Lex Cassia, 31f., 39
Lex Cornelia de falsis, 84, 280
Lex Cornelia de iniuriis, 252, 254ff., 261
Lex Cornelia de sicariis, 84, 173, 280, 286
Lex de imperio Vespasiani, 220, 274
Lex Gabinia, 35f.
Lex Hortensia, 19, 26
Lex Icilia, 34
Lex Julia ambitus, 268, 285f.
Lex Julia de adulteriis, 198, 201ff., 204f., 234, 267 n.4, 268, 286
Lex Julia de collegiis, 268
Lex Julia de vi, 156f., 164, 280, 281f.
Lex Julia iudiciorum publicorum, 268, 284, 286
Lex Julia peculatus, 280
Lex Julia repetundarum, 75, 85ff., 110, 268
Lex Junia, 69
Lex Latina Bantiae reperta, 55f.
Lex Mamilia, 37f., 77
Lex Memmia, 94f., 102
Lex Plautia de vi, 281
Lex Pompeia de ambitu, 116
Lex Pompeia de iure magistratuum, 96 n.10, 115
Lex Pompeia de parricidiis, 280, 286
Lex Pompeia de vi, 159 n.14
Lex Pompeia Licinia, 115
Lex Remmia, 249
Lex Sempronia, 48, 50
Lex Tarentina, 56f.
Lex Vatinia de imperio, 100f., 114
 Ten Tribunes' Law, 115
 XII Tables, 34, 230 n.103, 247, 247 nn.4, 6, 252, 258, 277

Lepida, 234

Lepidus, M. Aemilius (cos. 137 B.C.), 22

Lepidus, M. Aemilius (*IIIvir*), 192

Lepidus, M. Aemilius (M.f.), 180

Lex sacrata, 214, 214 n.50, 227

Libo Drusus, 178f.

Ligarius, Q., trial of, 142ff.

Limetanus, C. Mamilius, 36

Livia, 193, 197, 234, 238 n.121

Grant of sacrosanctity to, 217ff.

Majesty of, 228

Longinus, L. Cassius (*cos.* 107 B.C.), 38

Longinus, L. Cassius (*tr.* 104 B.C.), 31, 39

Lucretius, C., 23

Luscus, T. Annius, 216

Macedonicus, Q. Metellus, 215

Maecenas, C., 180, 184, 188, 190

Maiestas, *pass.*

'Definition' of, 2ff., 51f.

Elements of,

Beneficentia, 5

Bilaterality of obligation, 5, 11f.

Famous men, of, 14f.

Gods, of the, 4f., 136, 212f., 235

Greek renderings of, 1, 229 n.99a

Meaning of, 1ff., 88f.

Moral aspect of, 11f., 14f., 240

Oath of 32 B.C. and, 226

Origin of. *See Maiestas* s.v. Gods, of the

Plebs, of the, 13, 220

Publicarum rerum, 220

Relationship, as a, 1f., 4f., 8ff., 13, 119f., 212, 235

Roman People, of the. *See Maiestas Populi Romani*

Senate, of the, 13

Transference of, 6

Tribunes, of, 72, 74f., 220ff.

Maiestas, crime of. *See Crimen maiestatis*

Maiestas legislation:

Lex Appuleia, 16, 37, 40ff., 47ff., 55ff., 64, 68f., 73f., 87, 89, 159, 173, 282

Date of, 44, 48ff.

Defence under, 52f.

Fragments of, 44, 55ff.

Permanence of, 44ff.

Scope of, 44, 50ff.

Text of, 54f.

Lex Cornelia, 120, 254 n.30, 267, 276, 282

Date of, 68

Defamation and, 247ff.

Lex Julia repetundarum, and, 85ff.

Proscriptions, and, 84f.

Sanction of, 163 n.23

Scope of, 69ff., 87f., 105, 159 n.13, 185f.

Torture under, 83ff.

- Lex Hirtia*, 166ff.
- Lex Julia*, 69, 84, 266f., 279ff., 286
- Lex Julia* (Augustus), 266ff.
- Date of, 274ff.
 - Existence of, arguments against, 267f.
 - Existence of, arguments in favour, 271ff.
 - Permanence of, 278f.
 - Scope of, 271ff.
 - Second law, possibility of, 284ff.
 - Trial of Cremutius Cordus, and, 268ff.
- Lex Julia* (Caesar), 120, 155f., 166 n.28, 267
- Date of, 162ff.
 - Permanence of, 166
 - Reasons for, 160ff.
 - Sanction of, 162f., 165f., 230
 - Scope of, 157ff., 164f., 186 n.62, 269, 279ff., 287
- Lex Licinia et Iunia*, 95, 97
- Lex Papia*, 77ff.
- Lex Pedia*, 171ff., 176f., 179, 269, 283
- Lex Varia*, 37, 59, 63, 68f., 87, 89, 282
- Date of, 59f.
 - Execution of Varius under, 64ff.
 - Non-suspension of, 63f.
 - Permanence of, 67f.
 - Sanction of, 66
 - Scope of, 59
- Maiestas Populi Romani*, 6ff. and *pass.*
- Augmentation of, 51ff., 86, 106, 118, 130f., 150ff., 210, 249, 281
 - Dignitas* of Caesar, and. *See* Caesar, C. Iulius s.v. *Dignitas* of
 - Dignitas rei publicae*, equivalent of, 118
 - Diminution of, 3, 8, 12, 14, 29, 31, 38, 50ff., 75, 87, 88f., 145, 206f., 228, 249
 - Elements in,
 - Bilaterality, 9, 11f.
 - Clothing, 7f.
 - Dignitas*, 10
 - Language, 7f.
 - Morality, 11
 - Vires impares*, 10f.
 - Magisterial form of, 12f., 127f., 134f., 213, 226, 229, 250
 - Majesty of Augustus, and. *See* Majesty of Augustus, the
 - Nature of, 6ff.
 - Protection of, 8ff. and *pass.*
- Maiestas* treaties, 8f., 14, 29 n.26, 50 n.58, 56f., 109, 120, 132, 136, 150ff., 224f., 274
- Majesty of Augustus, the, 211f., 226ff.
- Elements in,
 - Oath of allegiance, 222ff., 241

Title of *pater patriae*, 235ff.

Tribunician sacrosanctity, 213ff., 228, 241, 252

Protection of. *See Crimen laesarum religionum; Crimen violatae maiestatis*

Malleolus, C., 99

Mallius, Cn., trial of, 40f., 42 n.31, 44

Manlius, A., 22

Manlius, L., 23

Manlius, M., 26

Marullus, Epidius, 152f.

Marcellus, M. Claudius, 183ff.

Marcellus, M. Claudius (*cos.* 22 B.C.), 185ff.

Marcellus, M. Claudius (*cos.* 51 B.C.), trial of, 140ff.

Marius, L., 231

Memoriae damnatio, 201

Metellus Numidicus, 56

Multae inrogatio, 18, 21, 22, 28

Murena, A. Terentius Varro (*cos.* 23 B.C.), 184, 187f.

Murena, Varro, trial of, 183f.

Naevius, Cn., 246f.

Norbanus, C., 40ff., 65

Trial of, 40, 42, 45f., 50ff., 72, 106, 281

Oath, 137f., 213f., 222ff.

Before Cannae, 230

Of Arrium, 223ff., 230

Of Assos, 223

Of Gangra, 223ff.

Of Sestium, 224, 224 n.84

Of 32 B.C., 222ff., 236

Sanction of, 227ff., 241

To Gaius, 223f.

To Gaius, sisters of, 224 n.84

To Octavian, 222ff., 236

To protect Caesar, 137f., 236

To protect tribunes, 214ff., 227, 241

To Tiberius, 225

Obrogatio, 156, 165

Octavia, grant of sacrosanctity to, 217ff., 227, 227 n.91

Octavian. *See* Augustus, the Emperor

Office and powers, separation of, 218

Opimius, L., 36, 50

Ovid, trial of, 243ff.

Parmensis, Cassius, 172

Pater patriae, 137ff., 235ff., 291

Patrocinium. *See* *Clientela*

- Paullus, L. Aemilius (*cos.* A.D. 1), 242
 Paullus, L. Aemilius (*quaes.* 59 B.C.), 98
Peculatus, 24, 25
 Pedius, Q., 71
Perduellio, 16, 19ff., and *pass.*
 Cases of, 22f., 26f., 30, 32f.
 Crimen maiestatis, and the, 16f., 25ff., 29f., 32f., 287f.
 Fragmentation of, 24, 35
 '*Lex Perduellionis*', and the, 34
 Nature of, 19ff.
 Philippus, L. Marcius, 215
 Piso, Cn., 76 n.53, 232, 238
 Pitholaus, M. Voltacilius, 251
 Plautius, C., 22
 Pleminius, Q., 23
 Pollio, C. Asinius, 258
 Pompeius Magnus, Cn., 115, 125, 133, 162
 Legislation of, 160, 160 n.14
 Pontius, Herennius, 209
Populus Romanus, *pass.*
 Juristic person, as a, 207
 Maiestas of. *See Maiestas Populi Romani*
 Postumius, L., 22
 Primus, M., trial of, 183ff., 274
 Proculcius, C., 184, 188, 190
Proditio, 62, 277
Provocatio ad populum, 18f., 32, 155ff., 156 n.7, 159f., 164f., 284
 Publius (Plautius) Rufus, 260f., 264
 Pulcher, C. Claudius, 20, 216
 Pulcher, P. Claudius, trial of, 27f., 29, 97
Purgatio, 43
 Pyrgensis, M. Postumius, 29f.
- Quaestio maiestatis*, 28, 30, 45, 46, 63, 69, 76, 86, 93 n.1, 97, 156, 179,
 183 n.51, 191, 193, 218, 233, 263, 264, 291
Quaestio Mamiliiana, 36f.
Quaestiones perpetuae, 78
 Origin of, 23f.
 Passing of sentence in, 67 n.18
 Retrospectivity in, 43, 43 nn.32, 33, 47
- Rabirius, C., trial of, 26, 32f., 148
Rechenschaftsprozess, categories of, 21f. *See also* Tribunes s.v. *Rechenschafts-*
 prozess of
Renuntiatio amicitiae, 181, 232
 Roman Criminal Law, *pass.*
 Procedural approach to, 17, 25ff., 86

- Rufus, Egnatius, trial of, 190ff.
 Rufus, P. Sulpicius, 50f.
 Rufus, Q. Salvidienus, trial of, 177ff.
 Rutilius, P., 20, 216, 221
- Sacramentum*, 200, 223
Sacrilegium, 131, 221f., 288ff.
 Sacrosanctity, 213ff., 223, 226f.
 Protection of, 214ff.
 Saturninus, C. Sentius, 190ff.
 Saturninus, L. Appuleius, 39f., 45f., 48ff., 53, 55, 89, 112
 Maiestas legislation of. *See Maiestas* legislation s.v. *Lex Appuleia*
 Scaurus, M. Aemilius, 36, 40, 65
 Trials of, 60ff.
 Scipio Africanus, 246
 Scipio, P., 215
 Scipio, trial of, 198ff. *See also* Julia, the elder
Securitas Augusti, 239
Securitas Populi Romani, 239
 Senate, *pass.*
 Auctoritas of, 210
 Judicial functions of, 176, 176 n.22, 179, 181f.
Senatusconsultum, *pass.*
 De Bacchanalibus, 35
 Ultimum, 33, 49f., 84, 176, 181f.
- Sestius, P., 99
 Silanus, D., 242
 Silanus, M. Iunius, 38
 Sosius, C., 263 n.46
 Staienus, 80f.
 Stlaccius Macedo, L., 290ff.
 Stlaccius Maximus, A., 290ff.
 Sulla, L. Cornelius, 70, 76, 82f., 84f., 89, 167 n.36
 Maiestas legislation of. *See Maiestas* legislation, s.v. *Lex Cornelia*
 Proscriptions of, 84f.
- 'Theory of the little laws', ix
 'Theory of the unchanged *maiestas populi Romani*', xi
 Thrasea Paetus, 226
 Tiberius Gemellus, 227
 Tiberius, the Emperor, 184, 225, 232, 234f., 238, 252, 270f.
 Oath to, 225
 Titius, Sex., trial of, 47f., 54
 Tolosa, treasure of, 39ff., 109, 289f.
 Treason, early Republic, in the, 19f. *See also Crimen maiestatis*
 Trebatius, C., 124 n.23, 209, 252
 Auctoritas of, 209
 Trebellius, 160f.

Trebonius, C., 141, 172f.

Tribunes, 18, and *pass.*

Maiestas of, 72, 74f., 220ff.

 Political prosecutors, as, 18f., 20f.

Rechenschaftsprozess of, 20ff., 25f., 26 n.18, 75f., 110

 Sacrosanctity of, 213ff., 222

Tubero, L. Aelius, 143

Tubero, Q. Aelius, 143ff.

Tubulus, L., 23

Ulpian, method of, 280f., 281 n.49

Varius Hybrida, Q., 59ff., 89

 Citizenship of, 65ff.

 Condemnation of, 64ff.

Maiestas legislation of. *See Maiestas* legislation s.v. *Lex Varia*

Varus, P. Attius, 143

Vatinius, P., *pass.*

 Legateship of, 94, 99ff., 102

 Trial of, 94ff., 102f.

Verres, C., 30, 79f., 99

Vespasian, the Emperor, majesty of, 248

Vestrius, P., 162

Women, prosecutions by, 218

Source Index

A. JURISTIC SOURCES

COLLATIO LEGUM MOSAICAR-		47.10.5.11	261, 264
UM ET ROMANARUM		47.10.5f.	266
1.3	280	47.10.6	254, 256
1.6	280	47.10.15.2	257, 258
1.15.2	266, 292	47.22.1.1	263
6.4.6	11	47.22.2	78, 263, 268
8.7	280	48.1.1	24, 86, 287
15.2	281	48.2	286
15.3.2	70	48.2.12pr.	147
		48.2.13	285, 286
GAIUS		48.4	84, 266, 268, 271, 286,
<i>Institutiones</i>		287, 290	
1.55	236	48.4.1	266
1.185	70	48.4.1pr.	222, 288
4.2	12	48.4.1.1	54, 78, 80, 134, 149,
4.19	69	167, 172, 176, 206, 208, 211,	
4.178	249	261, 264, 271, 272, 277, 279,	
		280, 281, 287, 289	
JUSTINIANUS		48.4.2	95, 266, 271, 272, 275,
<i>Institutiones</i>		277, 283	
1.9.2	236	48.4.3	34, 80, 154, 183, 207,
2.25.pr.	124, 209	266, 271, 272, 275, 277, 283	
4.18.5	266	48.4.4	112, 266, 271, 277, 283
<i>Digesta</i>		48.4.4pr.	145, 272
1.2	146	48.4.4.1	290
1.2.2.46	143, 144, 145, 146	48.4.5	266, 290
1.2.2.49	210	48.4.6	266, 290
1.3.10ff.	73	48.4.7	266
1.3.26f.	70	48.4.7pr.	285
1.3.28	70	48.4.7.1	286
3.2.11.3	206, 266	48.4.7.2	286
3.3.54pr.	102, 147	48.4.7.3	73, 244
22.5.13	249	48.4.8	218, 266
28.1.18.1	253, 266	48.4.9	266
44.7.3pr.	12	48.4.10	146, 266, 271, 272,
47.10	256	277	
47.10.5	254	48.4.11	266, 271, 287, 288
47.10.5pr.	254	48.5	268
47.10.5.8	255	48.5.1	267
47.10.5.9	253, 256	48.5.12.10	202
47.10.5.10	253	48.5.13	43
47.10.5.10f.	256	48.5.16.1	147

48.5.24(23)	203	8.11.10	266
48.5.30.5	204	9.5.1	266
48.5.30.5ff.	204	9.8	266
48.5.30.6	204	9.8.6	266
48.6	268	9.8.6pr.	288
48.6.7	280, 282, 284	9.8.6.2	288
48.7	268	9.8.6.2ff.	288
48.8	84	9.42.3.4	266
48.8.4	280	9.49.10.5	266
48.8.10	73	9.49.10.11	266
48.9.1	285	9.50.2	266
48.9.3	73	11.9.4	266
48.9.5	231		
48.9.6	280	PAULUS	
48.10	84	<i>Sententiae</i>	
48.10.1.13	73	2.26.14	202
48.10.9	280	5.4.15	253
48.10.9.3	280	5.4.15ff.	266
48.10.15pr.	285	5.4.16	264
48.11	268, 287, 288	5.4.17	254
48.12	268	5.21	266
48.13	268, 289	5.21.3	291
48.13.7	289	5.26.1	281
48.13.8.1	280	5.29	266
48.14	268	5.29.1	271, 272
48.14.1.4	285	5.29.2	84
48.16.1	249		
48.16.1.1ff.	249	THEODOSIUS II	
48.18.10.1	84, 266	<i>Codex</i>	
48.19.15	185	9.5	266
48.22.18	238	9.11.1	266
49.15.7.1	9, 118, 231	9.21.9	266
<i>Codex</i>		10.21.3	266
1.49.1	266	16.10.12.1	266
4.1.2	266	15.1.31	266

B. LITERARY AND EPIGRAPHICAL SOURCES

AMMIANUS MARCELLINUS		2.108.449	152
<i>Res Gestae</i>		2.108.450ff.	152
17.4.5	180, 182	3.3.26	172, 173
19.12.17	83	3.14.95	171, 172, 174, 175, 176, 283
APPIAN		4.50.216ff.	180
<i>Bella Civilia</i>		4.50.217	180
1.29	56	4.427	175
1.36	59, 60	5.7.66	177, 178, 179
1.37	59, 60, 64, 68	5.72	172
1.38	59, 60	5.132.548	213
1.59	85	<i>Iberica</i>	
1.73	86	11.64	22
1.100	85	13.81ff.	22
2.2.10f.	98	<i>Celtica</i>	
2.2.11	96	18	111, 112, 113
2.2.12	93, 96		
2.17f.	115	ASCONIUS	
2.20.144	138	<i>Orationum Ciceronis</i>	
2.20.145	138	<i>Quinque Enarratio</i>	
2.175ff.	143	21C	61, 62, 63
2.191	126	22C	59, 60, 61, 63, 67, 87

29C	249	42.4	214
37ff.C	160	<i>Ad Herennium</i>	
41C	100	1.12.21	40, 41, 46, 53, 87
45C	43	1.14.24	40, 41, 43, 147
52f.C	43	1.15.25	38
54f.C	116	2.12.17	2, 3, 41, 46, 53
57C	71	2.17.25	147
58C	71, 73	4.24.34	38
59C	72	4.25.35	10
60C	72	4.55.68	48
60f.C	74		
61C	72, 74, 75	AURELIUS AUGUSTINUS	
62C	72	<i>De Civitate Dei</i>	
68C	38	2.9	246
73f.C	63	4.15	106
78C	32, 39		
79C	59, 68, 77	CAESAR	
80C	38	<i>De Bello Gallico</i>	
		1.6.1	107, 111
PSEUD.-ASCONIUS		1.6.1f.	107
<i>Ad Cicero In Verrem</i>		1.6.3	107
1.10.29	246	1.6.4	103
2.1.33.84	79	1.6.5	111
		1.6ff.	105
(AUCTOR)		1.7.1	102, 107, 111
<i>Bellum Africum</i>		1.7.3	107
3.1	143	1.7.3ff.	107
3.4	143	1.7.4	38, 108
33.3	143	1.7.5	107
44.4	126	1.8.1f.	107
45.3	126	1.8.4	107
45.5	126	1.10	106, 108
54.4	134	1.10.1	108
57.3	135	1.10.1f.	105
64.2	162	1.10.3	107
76.1	143	1.12.3	121
77.1	135	1.12.5f.	108
86.3	143	1.12.6	121
89.2	143	1.12.7	121
89.5	251	1.13.1	121
90	134	1.13.2ff.	108
90.1	134	1.14.3	108
97.1	134	1.18.7	122, 123
<i>Bellum Alexandrinum</i>		1.19.2	122
24.2	134	1.20.5	122
33.4	134	1.31.14	122
34.1	151	1.31.16	122
34.2	135, 151	1.33.2	109, 122
36.2	134	1.33.4	109
65.1	161	1.35.2	109, 122
65.4	136	1.35.4	109, 122
66.5	135	1.39ff.	110
67	151	1.40.2	109
67.2	132	1.40.3	122
68.1	134, 151, 152	1.40.5	109
68.2	151	1.40.12	110
<i>Bellum Hispaniense</i>		1.42.3	109, 122
3.3	135	1.42.4	109
42.1	99	1.43.4f.	109, 122
42.3	134	1.43.6ff.	109

1.44.5	109	1.32.3	115
1.44.7	110	1.33.1f.	132
1.44.9	109, 110	1.35.1	133
1.44.12	110	1.35.3	133
1.45.1	122	1.35.5	133
2.1.1	111	2.19.4	132
2.4.2	111	2.20.2f.	132
2.5.4	111	2.23.4	143
2.31.2	111	2.23ff.	143
2.32.3f.	111	3.1.5	132
2.33.7	111	3.11.4	132
2.35.4	123	3.12.2	132
4.1.3ff.	112	3.26.1	132
4.2.2ff.	111	3.43.3	133
4.4f.	111	3.53.5	132
4.6.2ff.	111	3.57.4	133
4.7.2ff.	112	3.79.4	133
4.9.3	112	3.91.2	132
4.11.1ff.	112	3.99.3	132
4.11.4	112	3.106.4	133
4.12.1	112	3.107.2	134
4.13.4ff.	112		
4.14f.	112	CASSIODORUS	
4.15.1ff.	111	<i>Chronica</i>	
4.16	112	Ad 27 B.C.	278
4.16.3	123		
4.16.7	123	CICERO	
4.17.1	112, 123	<i>Pro Balbo</i>	
4.20	112	11.28	40
4.38.5	113	16.36	8, 12
5.7.2	123	16.37	9
7.5	125	25.57	57
7.8	125	61	114
7.17.3	123	<i>Pro Caelio</i>	
7.81.6	100	29.70	281
<i>De Bello Civili</i>		<i>In Catilinam</i>	
1.1.3	131	1.2.4	49, 50
1.2.6	131	1.28.4	37
1.3.5	131	1.28.10	37
1.4.4	127	4.2.4	49
1.5.2	127	4.5.10	48
1.5.5	127	<i>Pro Cluentio</i>	
1.7.1	127	35.97	81
1.7.3ff.	127	36.98	57
1.7.7	126	36.99	80
1.7.7f.	127	36.99ff.	81
1.7.8	130, 131	38.107	209
1.8.3ff.	128	41.116	85, 86
1.9.2	115, 128	54.148	43, 54
1.9.2f.	130	<i>Pro Deiotaro</i>	
1.9.3	130	2.4	149, 150
1.9.5	130	2.5ff.	149, 150
1.12.3	143	3.9	151
1.12.13	143	4.11	151
1.13.1	132	5.13	152
1.22.5	130	5.15	149
1.30.2	143	8.22	149
1.31.2	143	8.23	149
1.31.3	143	8.24	149
1.32.2	131	8.25	149

8.26	149	2.21.51	127
11.32	149	2.22.53	128
12.33	149	2.26.64	162
12.33f.	149	2.29.71	142
14.38	150	2.29.72	128
14.39	150	2.29.73f.	141
33.4	137	2.29.74	141
<i>De Domo Sua</i>		2.93ff.	149
17.45	27	2.37.95	149
31.82	56	2.110	137
31.83	32	5.3.8	97
47.123	215	5.4.10	167
<i>De Lege Agraria</i>		6.19	6
3.2.5	84	11.1ff.	172
<i>Pro Ligario</i>		11.2.5	173
1.1	144, 145	11.13.34	151
1.2	142	13.16.32	166, 168
1.2ff.	146	<i>In Pisonem</i>	
2.4	142	21.50	75, 85
2.5	147	<i>Pro Plancio</i>	
3.9	143, 144	17.43	79
4.10	143	29.70	36
4.11	143, 148	42.104	79
5.13	143, 148	<i>Post Reditum</i>	
7.21	143	2.5	237
7.22	143	<i>De Provinciis Consularibus</i>	
8.24	143, 144, 146	28	114
8.25	143	<i>Pro Rabirio Perduellionis</i>	
9.27	143	<i>Reo</i>	
10.29	144	1.2	33
10.30	142, 145, 147	2.7f.	32, 33
34	142	3.9	33
12.37	148	4.12	48
<i>Pro Marcello</i>		6.18	32, 33
1.3	140	6.19	32
18	132	7.20	33, 50
7.21	140, 142	9.24	47, 48
7.22f.	140	<i>Pro Rabirio Postumo</i>	
8.25	140	4.9	70
10.31	140	6.13	88
10.32	140	<i>Pro Sex. Roscio Amerino</i>	
<i>Pro Milone</i>		19.55	249
27	112	43.125	84
<i>Philippics</i>		<i>Pro Sestio</i>	
1.3	167	13	99
1.7.16	166	33	100
1.7.16ff.	157	37	56
1.7.18	160	40	94
1.8.19	160, 166	61	48
1.9.21	156, 157, 158, 160,	135	95
161		140	36
1.9.21f.	158, 164, 165	<i>In Vatinius</i>	
1.9.22	157, 158, 159, 164	2.5	72, 73, 95, 98
1.9.23	155, 156, 157, 158,	5.11	99
	163, 164, 165, 166	5.12	99
1.9.23ff.	158	6.15	94
2.14.34	141	7.16	98
2.48	100	7.18	95
2.49	100	9.23	95
2.50	100	10.25	98

11.27	94	2.47.197ff.	45
14.32	97	2.48.198	45, 51
14.33	95, 102, 103	2.48.199	45, 46, 52
14.34	94, 95, 102	2.49.200f.	52
15.35	100	2.49.201	40, 51, 52
15.36	100	2.214	45
<i>In Verrem</i>		3.11	66
1.4.11	99	<i>Paradoxa Stoicorum</i>	
1.39	81	4.32	43
2.1.4.10ff.	30	<i>Partitiones Oratoriae</i>	
2.1.12	80	30.103ff.	2
2.1.15	99	30.105	2, 10, 40, 51, 52
2.1.36	99	<i>De Re Publica</i>	
2.1.33.84	79	1.3.6	38
2.3.35.82	167	2.53f.	19
2.4.41.88	80	2.31.54	155
2.5.20.50	80	IV	246
2.5.50.133	80	<i>De Senectute</i>	
2.5.63.163	48	12.42	11
<i>Brutus</i>		<i>Tusculanae Disputationes</i>	
29.102	33	4.4	247
33.127	36	<i>Epistulae ad Atticum</i>	
34.128	36	1.1	98
44.162	41, 46	1.16.2	43
46.169	41, 46	2.9.1	95, 98
88.303	59	2.19.5	98
89.304	63	2.20.1	98
89.305	64, 68	4.15.9	102
<i>De Divinatione</i>		4.18	77
1.38.82	5, 12	7.11.1	125, 126
<i>De Inventione</i>		8.3.3	115
2.11.15	147	8.11.2	125
2.17.52	31, 221	10.4.8	131
2.17.53	2, 3, 10, 12	11.6.2	132
<i>De Legibus</i>		11.6.6	132
1.15.42	84	11.7.2	166
2.6.14	49	11.10.2	161
3.16.35	35	11.23.3	161
3.16.36	31, 39	12.45.2	137
3.20.47	22	13.44.1	137
<i>De Natura Deorum</i>		<i>Epistulae ad Familiares</i>	
2.3.7	28	1.7.10	114
2.30.77	5, 12	1.9.25	79
3.30.74	40, 42	3.6.3	79
3.33	64	3.10.6	79
<i>De Officiis</i>		3.11.2	247
2.14.49	51	4.4	141
2.31.112	23	4.4.3	140
3.85	130	4.4.4	140
<i>De Oratore</i>		4.7.4	140
2.11.48	48	6.7.1	251
2.21.89	40	6.13	144
2.25.107	40, 45, 51	6.14	144
2.25.108	51	7.10	253
2.25.109	51	7.17	253
2.28.124	51	8.8.5	124
2.28.125	41	8.8.7	124
2.39.164	2, 3, 10	8.16.1	131
2.40.167	40, 52	9.9.3	133
2.47.197	40, 51	16.11.2	127

<i>Epistulae ad Quintum</i>		44.6.4	136
<i>Fratrem</i>		44.7.2ff.	137
2.13.3	124	44.7.3f.	138
3.1.15	76	44.7.4	138
3.1.24	76, 79	44.9.2f.	182
3.2.1	76	44.10.1	182
3.3.3	79	44.10.1ff.	182
3.9.1	77	44.10.2f.	182
		44.46.2	139
CORPUS INSCRIPTIONUM		44.49.3	160
LATINARUM		44.51.2	187
1(2).1.441	184	45.40.3	101
11.5998a	224	46.48.2	283
		46.48.2f.	171
DIO CASSIUS		46.48.3	171, 172
<i>Roman History</i>		46.48.4	171
37.27f.	32	46.49.3	171
37.28.4	32	46.49.4f.	175
38.6.1ff.	98	46.49.5	175
38.7.1f.	96, 98	46.55.3	177
38.35.2	110	47.29.3	172
38.37.1	110	48.28.4	177
38.41.1	110	48.33.1	177
39.3.2	113	48.33.2	179
39.25.1	114	48.33.3	177, 178, 179
39.47.3	112	49.15.3ff.	220
39.53.1	112	49.15.5f.	213, 216
39.55	76, 77	49.38.1	217, 219
39.56	76	50.2.6	196
39.60	76	50.3.1	196
39.62	76	51.19.6	213
40.51.2	115	51.19.7	233
40.56.1	115	53.1.5	208
40.56.1ff.	115	53.1.6	208
41.3.2	127	53.12.1	226, 275
41.15.2	131	53.14.5	101
41.17.2	131	53.15.4	275
41.17.3	125	53.15.5	274
41.24.1	132	53.15.6	275
41.26.1	126	53.17.5	208, 275
41.36.3	132	53.17.9	216, 217
41.41f.	143	53.17.10	217
41.42.7	146	53.17.11	217
41.52.2f.	133	53.18.3	236, 238
42.20.1	136, 167	53.23.5	180
42.20.1f.	166	53.23.5ff.	180
42.29.1ff.	161	53.23.6	181, 182
42.49.4	126	53.23.6f.	181
42.50.2f.	161	53.24.4	190
42.51.1f.	162, 163	53.24.4f.	190
42.51.2	162	53.24.5	190
42.52.1ff.	161	53.24.6	190, 191, 192
43.5.3f.	126	53.30.4	186
43.14.6	137	53.31.4	186, 187
43.20.3f.	153	53.32.5	213
43.25.1	163	54.1.1	184
43.25.1ff.	163	54.3	185
43.44.2	139	54.3.2	186, 187
43.45.3	137	54.3.2ff.	183, 184
44.3.2f.	137	54.3.3	188

54.3.4	184, 188, 189	p. 631	112
54.3.4f.	187	DIONYSIUS HALICARNASSEN-	
54.3.5	184, 189	SIS	
54.3.6	183	<i>Antiquitates Romanae</i>	
54.3.8	184, 197	2.10.3	34
54.4.1	197	6.89	215
54.10	192	9.44.7	22
54.10.1	191	10.31	221
54.10.2	191, 192	10.50.1f.	19
54.12.3	193	19.6.5	22
54.12ff.	267		
54.15.1	192, 207	ENNIUS	
54.15.2f.	192	<i>Annales</i>	
54.15.4	180, 192, 207	6.153	235
54.15.5f.	192		
54.15.7	192	FLORUS	
54.16	282	<i>Epitomae</i>	
54.18.1	267	1.38.4	38
54.19.3	197	2.13.9ff.	127
54.19ff.	193		
55.4.3	258, 259, 264	GELLIUS	
55.4.4	259, 264	<i>Noctes Atticae</i>	
55.10.4	203	3.3.15	246, 247
55.10.5	202	3.4.1	215
55.10.10	235, 238	3.9.7	42
55.10.12	199	6.11.9	216
55.10.12ff.	198	7.8.5	246
55.10.13	234	10.6	28
55.10.14	199	10.6.2	28
55.10.15	199, 201	10.6.3	28
55.10.16	199, 203, 204, 205	10.6.4	28
55.13.1	199	13.12.9	214
55.14.1	194, 196		
55.14ff.	193, 196, 197	HIRTIUS	
55.17.1	193	<i>De Bello Gallico VIII</i>	
55.21.1	196	2.1	100
55.22.1	196	3.5	124
55.22.2	195	6.2	124
55.27.1	260	23.3	125
55.27.2	260	24.2	101
55.27.3	260, 264	24.4	125
56.27.1	265, 271	30ff.	125
56.32.4	199	38.1	101
57.9.2	229	39	125
57.15.5	178	44.5	125
57.24.2	269, 270	46.4	101
57.24.2f.	270	50.1	101
57.24.3	269	50.4	125
57.24.4	271	52.3	131
59.3.4	217, 224	52.4	125
59.9.2	224	52.5	130
fr. 83.8	49	53.1	124, 125
fr. 90	22, 40, 42		
		HORACE	
DIODORUS		<i>Carmina</i>	
<i>Library of History</i>		1.2.50	235
24.12.3	23	1.12.51f.	236
24.19	11	2.10	188
33.2	22	3.6.5	5
37.11	87	3.24.25ff.	235
		3.24.27ff.	240, 291

<i>Saturae</i>		6.1	11
2.1.7ff.	252	7.3.4	23
2.1.18ff.	252	8.7.15	237
2.1.82f.	247, 252	9.36.14	114
<i>Epistulae</i>		10.9.3ff.	19
2.1.257f.	228	10.37.6ff.	22
		10.46.16	22
INSCRIPTIONES LATINAE		23.43.10	10
SELECTAE		23.44.1	10
1.190	223	23.53.10ff.	230
1.244	220	25.3.8ff.	30
2.8781	223, 227	25.4	30
8995.4ff.	181	25.4.8	30
		26.3.5	30
IUSTINUS		26.3.8	30
<i>Epitoma</i>		29.16.7ff.	23
32.3.9ff.	42	29.17.11	8
		29.19.6	114
JEROME		37.57.12	23
a. Abr. 1805	247	38.11.2	1, 8
a. Abr. 2048	260	41.7.7f.	22
		41.7.10	22
JOSEPHUS		42.21.4	79
<i>Jewish Antiquities</i>		42.52.15	106
14.192	151	43.8	23
		43.16.4ff.	216
LEX ACILIA		44.13.4f.	237
73ff.	43	44.16.8	20
74	69	45.15.8	20
LEX LATINA BANTIAE RE-		<i>Periochae</i>	
PERTA		19	27, 28
1ff.	56	49	23
14ff.	56	58	48, 49, 216
15f.	55	59	215
		61	49
LEX TARENTINA		65	38
3	66	67	39, 40
18	65	69	56
		110	132, 143
LICINIANUS		116	138, 153
p. 13F	41, 44	120	171, 283
		127	177, 178, 179
LIVIVS ANDRONICUS		133	180
<i>Aegisthus</i>	4	<i>Fragmenta Oxyrhynchi Reperta</i>	
		49	23
LIVY		54	35
<i>Ab Urbe Condita</i>			
1.20.3	217	LUCAN	
1.26	20, 26, 34	<i>Pharsalia</i>	
2.7.7	12	4.581ff.	143
2.55.9	11	5.246	126
2.57.3	11	7.304f.	117
3.20.7	19		
3.24.9	221	MACROBIUS	
3.53.4	80	<i>Saturnalia</i>	
3.55	215	1.11.17	198, 200
3.55.4	19	1.11.21	189
4.30.3	19	2.2.13	251
4.45.8	237	2.4.9	257
5.41.8	6	2.5.3ff.	234

MANILIUS		2.512	228
<i>Astronomica</i>		2.574	238, 244
1.7	235, 238	3.5.44	244
1.925	235, 238	3.5.47f.	244
		3.5.49f.	244
NEPOS		3.5.51f.	244
<i>Atticus</i>		3.6.35	244
5	98	4.2.73f.	244
7.3	161	4.4.13ff.	238, 239, 244
NICOLAUS OF DAMASCUS		<i>Epistulae ex Ponto</i>	
<i>Vita Caesaris</i>		1.1.36	244
22.80	138	2.2.117	236
p.407	236	2.2.117ff.	238
		2.8.19f.	239
OBSEQUENS		2.8.29f.	245
<i>Prodigiorum Liber</i>		2.9.71	244
46	47	3.1.155f.	228
OROSIUS		PHILO	
<i>Historiae Adversum Paganos</i>		<i>Legatio ad Gaium</i>	
5.15	40	5	227
5.15.23f.	38, 109		
5.15.25	42	PLINY THE ELDER	
5.16.5f.	42	<i>Naturalis Historia</i>	
6.15.7	143	7.44.144	215
6.18.34	213	7.45.149	199
6.20.7	213	21.9	199
OVID		PLINY THE YOUNGER	
<i>Amores</i>		<i>Epistulae</i>	
3.9.63f.	180	3.9	88
<i>Fasti</i>		6.29	88
2.127ff.	235, 238		
2.131ff.	235	PLUTARCH	
2.138	236	<i>Antony</i>	
5.11ff.	240	9.1ff.	161
5.17ff.	5	10.3	162
5.18	5	11.2	141
5.19f.	5	13.2	141
5.23ff.	240	53.1	219
5.25f.	5	53.2	218
5.27ff.	240	54.1	218, 219
5.29	5	55.1	219
5.31f.	5	<i>Brutus</i>	
5.35ff.	6, 240	11.1	144
5.43ff.	240	27.3	171, 175, 176, 283
5.47	240	<i>Caesar</i>	
5.49	240	21.6	115
<i>Tristia</i>		22.2	112
2.39	238, 244	22.3	111, 113
2.51f.	244	31.2	127, 128
2.103ff.	244	61.3	152
2.131ff.	244	<i>Cato Minor</i>	
2.137f.	245	2	87
2.181	238, 244	32.2	98
2.207	243	32.3	93
2.208ff.	244	32.5	96
2.212	243	44.1	154
2.445f.	180	44.7	154

51.1	113	SALLUST	
51.2ff.	113	<i>Bellum Iugurthinum</i>	
Cicero		31.17	13
39	144	40.1	36, 37
39.7	144	40.3	38
Crassus		40.4	38
15.7	115	40.5	38
Ti. Gracchus		<i>Ad Caesarem I</i>	
14.4f.	216	3.1	133
19	48	8.4	133
Marius		<i>Ad Caesarem II</i>	
5	231	2.4	121
Pompey		4.2	116
52.4	115	4.2ff.	116
		4.3	116
POLYBIUS		4.3f.	116
<i>Pragmatic Inquiry</i>		<i>Oratio Philippi</i>	
1.10.11	106	22	50
1.52	27	SCHOLIA BOBIENSIA	
21.32.3	1, 8	27	27
		89	94
PORCIUS LATRO		90	94
<i>Declamatio in Catilinam</i>		106	95
19	35	116	94, 95
		122	94, 95
QUINTILIAN		SCHOLIA GRONOVIANA	
<i>Institutiones Oratoriae</i>		p.83	142, 143
3.7.7	5	p.83f.	144
4.4.8	74	p.84	143, 144
4.5.8	72	p.326	71
5.4.5	147	SCHOLIAST	
5.10.39	250, 257	<i>Ad Cic. Sex. Rosc.</i> 19.55	249
5.13.5	147	<i>Ad Juvenal</i> 6.158	242, 243
6.3.78	257		
6.5.10	72	SECOND EDICT OF CYRENE	
7.3.35	72	290, 291, 292	
7.4.17	147		
7.4.18	147	SENECA (RHETOR)	
7.8.7	73	<i>Controversiae</i>	
10.1.22	258	2.4.11	259
10.1.116	257	3.praef.1ff.	257
10.5.13	72	3.praef.5	259
11.1.80	143, 144	3.praef.17	257
<i>Declamationes</i>		9.25pr.	31
331	73	9.25.13	72, 82
376	237	9.25.13ff.	81, 82
		9.25.17	82
RES GESTAE DIVI AUGUSTI		10.praef.5	255, 265
1	283	10.praef.8	265
2	171	<i>Suasoriae</i>	
2.12.14	267	2.21	263
3.1	236	SENECA (PHILOSOPHUS)	
6	222, 276	<i>De Beneficiis</i>	
10	213, 220	3.27.1	252
25	222	4.19.4	5
34	208, 209		
35.1	235, 237		

4.30.2	195, 196	30.3f.	102, 116
6.32.1	199	30.4	102, 117, 133
6.32.1f.	198, 200	30ff.	164
6.32.2	199	34	164
<i>De Brevitate Vitae</i>		37	163
4.5	180, 182, 192, 200	37ff.	164
<i>De Clementia</i>		42.2	162, 163
1.5.7	238	42.3	163, 165
1.9.2	193, 194, 197	69	126
1.9.2ff.	193	75.5	251
1.9.3	194	79.1f.	152
1.9.5	194	79.2	152
1.9.6	180, 182, 188, 190, 192, 193, 194, 197	84.2	138
1.9.8	195	86	138
1.9.11	194, 195	<i>Augustus</i>	
1.9.12	195, 196	10	171, 173
1.10.3	200, 202, 203, 236, 238	19	180, 260
1.13.4f.	236, 238	19.1	182, 185, 188, 192, 201
1.14.2	236, 238	19.2	201
<i>Ad Marciam</i>		25	228
1.22.4	269	27	174
<i>Epistulae Morales</i>		32	268
70.10	178	34.1	267, 276, 286
<i>Octavia</i>		35	193, 270
477f.	238	37	229
SERVIUS		51	252
Ad <i>Aen.</i> 1.823	7	55	251, 253
Ad <i>Aen.</i> 6.609	230	56	251, 257
Ad <i>Eclog.</i> 10.1	180, 182	56.1	251
Ad <i>Georg.</i> 4.1	180	56.3	185
STRABO		56.4	184
<i>Geography</i>		58.1	238
4.1.13	42	58.1f.	235, 238
6.4.2	236, 238	58.2	237
14.670	188, 189	65	199, 203, 242
17.3.25	274	66	180, 181, 182
SYLLOGE INSCRIPTIONUM		66.2	177, 178
GRAECARUM		70	260, 261
2.481ff.	223	84	197
SUETONIUS		<i>Tiberius</i>	
<i>Caesar</i>		2	27, 28
6.7	99	8.1	184, 185, 188
16.2	121	11	202
17	121	11.4	202, 203
18	121	25	178
23.1	94, 98, 101	61.3	269
24.1	114, 115	<i>Caligula</i>	
24.2	107, 114	15.3	224
24.3	112, 114	16.1	265
26.1	115	<i>Nero</i>	
28.2	124	2.2	94
28.2f.	96, 115	3.1	171, 172, 283
30	117	3.2	171, 172
30.3	94, 95, 103, 116	<i>Galba</i>	
		3.2	171, 283
		<i>Vespasian</i>	
		7	229
		<i>De Grammaticis</i>	
		5 (16)	180

TACITUS

Dialogus

19.1 257

26.4 257

Annales

1.10.3 188, 205

1.14.2f. 237

1.53.1 199

1.53.5 204, 205

1.53.5ff. 203

1.53.6 201, 205

1.53.8 201

1.72.2 238

1.72.3 38, 228, 229, 250

1.72.3f. 246

1.72.4 250, 255, 259, 260,

264

2.27.1 178

2.27.2 178

2.27ff. 292

2.28.2ff. 178

2.30.1 178

2.32.3f. 178

2.32.5 292

2.50 234

2.50.1 232

2.50.2 234

2.50.4 232, 234

2.50.5 234

2.55.4 238

2.80.4 238

2.87.2 238

3.12.4 232

3.13.3 238

3.14 76

3.16 76

3.16.1 185

3.18.1 200, 201

3.22f. 234

3.24.2 205

3.24.2f. 199, 201, 242

3.24.3 206, 212, 228, 233

3.24.5ff. 242

3.28.3 278

3.50.6 230

3.56.2 222

4.21.5 259, 260, 264

4.34.1 269, 270

4.34.2 269

4.34.2f. 268

4.34.3 270

4.34.7 154

4.34.8 252

4.44.5 205, 206

4.52.1 234

4.52.4 234

4.52.5 235

4.52.6 234

4.71.6f. 242

6.10.1 206

14.7

227

16.22 228

16.28 226

VALERIUS MAXIMUS

Memorabilia

1.4.3 27

2.2.2 8

2.8.3 30

2.9.3 11, 31

2.10 14

2.10pr. 14

2.10.5 15

2.10.6 15

2.10.8 15

3.2.17 48

3.7.8 61

4.7.3 40

5.7.2 153

6.9.13 40, 42

7.2.ext.17 209

7.7.5 237

8.1.damn.2 48

8.1.4 27

8.1.abs.3 76

8.1.damn.3 47

8.1.abs.4 27

8.1.damn.4 28, 48

8.1.damn.5 48

8.5.2 45

8.6.4 59, 60, 64, 65

9.5.2 215

9.15.2 227

VELLEIUS PATERCULUS

Historiae Romanae

2.3.2 48

2.12.2 38

2.19.3 190

2.24.2 215

2.43.4 99

2.46.2 115

2.59.5 177

2.68.4 153

2.69.5 171, 283

2.76.4 177, 178

2.77.2 172

2.86.2 236, 238

2.87.1 180

2.87.3 172

2.88 180

2.88.1 180

2.88.3 180

2.89.4 239

2.91.2 187, 188, 189, 191

2.91.3 190, 193

2.91.4 190, 191

2.92.1 191

2.92.4 190, 191

2.93.1 189, 190

2.100.3ff.	198, 241	(VICTOR)	
2.100.4	200, 205	<i>De Viris Illustribus</i>	
2.100.5	198, 199, 202	62	56
2.103.3	239	67	56
2.129.2	178	72	62
2.130.3	178	73	56
		73.5	40
VERGIL			
<i>Aeneid</i>			
1.281f.	7		
12.798ff.	7	ZONARAS	
12.819ff.	6	7.15	217